

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION
4 -----

5 IRON WORKERS LOCAL UNION)
6 NO. 17 INSURANCE FUND and)
7 its Trustees, et al.,) No. 1:97CV1422
8 Plaintiffs,) JUDGE JAMES S. GWIN
9 vs.) CLASS ACTION
10 PHILIP MORRIS, INC., et al.,) VOLUME I
11 Defendants.)
12 -----

13
14 Deposition of FRANK PAUL GULLOTTA, Ph.D., at
15 555 Twelfth Street, N.W., Washington, D.C.,
16 on Wednesday, October 21, 1998, commencing
17 at 8:42 A.M., before Josett F. Hall,
18 Registered Merit Reporter and Notary Public.
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24

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INTERIM COURT REPORTING

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22 ALSO PRESENT:

23
24 SHELLEY SANDERS, VIDEOGRAPHER
25

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THE VIDEOGRAPHER: Good morning.

This is the videotaped deposition of Frank P. Gullotta, Ph.D., noticed by plaintiffs in Case No. 1:97CV1422, entitled "Iron Workers Local Union No. 17 Insurance Fund, et al., versus Philip Morris, Inc., et al.," in the United States District Court for the Northern District of Ohio.

My name is Shelley Sanders. I am the certified legal video specialist operating the videotape equipment for this deposition. I am employed by Interim Reporting.

This deposition is being taken on Wednesday, October 21, 1998, at the offices of Arnold & Porter, 555 Twelfth Street, Northwest, Washington, D.C., at the time indicated on the lower portion of the television screen.

The time on the screen is 8:42:07.

I will now ask counsel to please identify themselves and indicate the parties they represent.

The court reporter, Josett Hall of Interim Reporting, will then administer the oath to the witness.

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1 MR. ADELMAN: My name is
2 Roger Adelman. I'm counsel for the plaintiffs.

3 MR. McDONNELL: My name is
4 Alfred McDonnell, and I'm counsel for
5 Philip Morris.

6
7 FRANK PAUL GULLOTTA,
8 having been first duly sworn, testified as follows:

9
10 MR. ADELMAN: Counsel, I believe you
11 have a preliminary matter?

12 MR. McDONNELL: Yes. Thank you.

13 I would like to have the two documents
14 which are letters dated October 13 and October 19,
15 1998 marked for identification as Defendant's
16 Exhibit A, Deposition Exhibit A, and made a part of
17 the record of the deposition.

18 These letters state Philip Morris'
19 understanding of the terms on which the deposition
20 of Dr. Gullotta is proceeding today.

21 That's all I have to say about it.

22 (Record Exhibit A was
23 marked for identification and is
24 annexed hereto.)

25 MR. ADELMAN: In response to that --

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1 THE VIDEOGRAPHER: Excuse me. I'm
2 sorry. I beg your pardon.

3 (Pause in the proceedings due to
4 technical difficulty.)

5 THE VIDEOGRAPHER: I'm sorry. We're
6 back on the record. We had a technical difficulty.

7 The time on the screen is 8:46:27.
8 Mr. Adelman, that's when we cut off.

9 MR. ADELMAN: Let me respond to the
10 discussion of Exhibit A filed in this record by
11 defense counsel.

12 Plaintiffs' position with respect to
13 this deposition is we do not agree to any
14 stipulation as proposed in the October 19 letter of
15 Mr. Lerman to Mr. Janacek.

16 We reserve the right to depose this
17 witness, Mr. Gullotta, or any other witness at later
18 times in connection with the union health and
19 welfare trust fund litigation.

20 And specifically with respect to
21 Dr. Gullotta, we reserve the right to redepose him
22 at a later time.

23 Thank you.

24 (Continued on next page.)
25

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EXAMINATION

BY MR. ADELMAN:

Q. Could you state your name, please.

A. My name is Frank Paul Gullotta.

Q. Dr. Gullotta, where do you reside?

A. I reside at [DELETE]

Q. How are you employed now?

A. I'm employed by Philip Morris.

Q. And what's your capacity with Philip Morris at the present time?

A. I'm a scientific information analyst in worldwide scientific affairs.

Q. And where in the Philip Morris complex do you work?

A. I work in B Building.

Q. Where is that located?

A. That's located next to the tower at 4201 Commerce Road.

Q. Now, when did you first begin your employment with Philip Morris?

A. June 27, 1977.

Q. Have you worked for Philip Morris continually from June 27, 1977 to now?

A. Yes.

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1 Q. Can I ask why you hesitated?

2 A. Well, for three years I was employed by
3 Philip Morris International, and then I returned to
4 Philip Morris USA.

5 Q. Let's get on the record what you refer
6 to when you say Philip Morris International.

7 A. I was working for an overseas affiliate
8 called the Institute of Biological Research and I
9 was there as an employee of Philip Morris
10 International.

11 Q. And what were the years you were
12 employed by the Institute of Biological Research?

13 A. That was from October 1992 to December
14 1995.

15 Q. And where were you employed for the
16 Institute of Biological Research?

17 A. In Cologne, Germany.

18 Q. What is the acronym you refer to the
19 Institute of Biological Research as?

20 A. INBIFO.

21 Q. I-M-B-I --

22 A. I-N.

23 Q. B-I-F-O?

24 A. Correct.

25 Q. And that's the acronym for the German

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INTERIM COURT REPORTING

1 for Institute of Biological Research; right?

2 A. That's correct.

3 Q. All right. I wonder if you could just
4 briefly tell me your educational background, just
5 give me your degrees and the dates you got them and
6 where you got them from.

7 A. I received a bachelor of arts from
8 California State University at Los Angeles in 1970,
9 and I received a Ph.D. in experimental psychology in
10 1976 from the University of New Mexico.

11 Q. Before you joined Philip Morris, what
12 was your employment history?

13 A. Before I -- immediately before I joined
14 Philip Morris, I was an assistant professor in the
15 department of psychology at State University of
16 New York in Albany.

17 Q. What was the period of your work as
18 assistant professor at State University of New York
19 in Albany?

20 A. That was from 1976 to June 1977.

21 Q. And at that point you went to
22 Philip Morris?

23 A. That's correct.

24 Q. What was your major concentration under
25 which you got the BA at Cal State?

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1 A. Psychology.

2 Q. Did you receive any degrees in the
3 language while you were studying at either Cal State
4 or University of New Mexico?

5 A. No.

6 Q. Do you speak any foreign languages?

7 A. I do.

8 Q. Which?

9 A. German.

10 Q. How did you acquire German?

11 A. Through two years of college-level
12 courses in German and through conversational speech
13 while living in Cologne.

14 Q. And again you're referring to your
15 three years with the INBIFO?

16 A. That's correct.

17 Q. Now, at Philip Morris you have held a
18 number of positions; is that not correct?

19 A. Yes.

20 Q. What was your first position there at
21 Philip Morris?

22 Why don't we run through the positions
23 by date and title.

24 A. My first position was research
25 scientist in the behavioral research group, and that

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1 was from 1987 to approximately 1981 or '82.
2 Q. I think you meant to say '77 to '81.
3 A. '77. Excuse me.
4 Q. All right. And where did you work
5 there? In Richmond?
6 A. Correct.
7 Q. To whom did you report?
8 A. I reported to Dr. William Dunn.
9 Q. What was his title?
10 A. Principal scientist.
11 Q. Now, doing behavioral research as a
12 member of the behavioral research group, did you
13 have people who worked under you?
14 A. Yes.
15 Q. And how many?
16 A. One.
17 Q. Did you work with other colleagues on a
18 more or less parallel level? Did you consult with
19 people in the research unit?
20 A. No.
21 Q. You just worked by yourself?
22 A. That's correct.
23 Q. You didn't review the work of others?
24 A. Not routinely, no.
25 Q. Well, did you ever do that?
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1 A. I read other people's things, yes.
2 Q. Well, more focused, the other people
3 being people you worked with?
4 A. I read some of their, what they
5 produced, yes.
6 Q. And when you say "they," how many
7 people are we talking about?
8 A. At various times I would say four or
9 five other people.
10 Q. And were they all Ph.D. types?
11 A. Ph.D. and masters I would say.
12 Q. What type of the research were they
13 doing, generally?
14 A. Generally they were in various areas of
15 psychology, such as learning psychology, animal
16 learning, social psychology, things of that nature.
17 Q. Let me step into your background
18 particularly with respect to your Ph.D.
19 Did you do such type research in your
20 graduate studies, in other words, animal behavior
21 and such?
22 A. Yes, I did.
23 Q. Okay. Now, how many members were
24 there, professional members of the behavioral
25 research group when you were there between '77
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1 and '81?

2 A. If we -- altogether at various times
3 about between 10 and 12.

4 Q. Okay. Now, what was your next position
5 after your tenure as a research scientist at the
6 behavioral research group?

7 A. My next position was the project leader
8 of the project entitled Electrophysiological
9 Studies.

10 Q. Is there an acronym for that?

11 A. No.

12 Q. So we've got to use
13 electrophysiological studies; right?

14 A. Yes.

15 Q. Okay. How long did you serve in that
16 position?

17 A. From the time I left behavioral
18 research in 1981 or '82 until the time I transferred
19 to Cologne in 1992.

20 Q. Okay. I take it you were promoted into
21 that position from your former position as a
22 research scientist?

23 A. Yes.

24 Q. Was it a new position, project leader
25 in electrophysiological studies?

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1 A. That's correct.
2 Q. How did it come to be created? Do you
3 know?
4 A. It was created when the behavioral
5 research group was broken up into various subunits.
6 Q. Did you have a hand in the creation?
7 A. No.
8 Q. Did you suggest that this group be
9 created in order to pursue research?
10 A. No.
11 Q. To your knowledge, whose idea was it to
12 create the electrophysiological study group?
13 A. I think it was Dr. Jim Charles.
14 Q. Say -- James Charles?
15 A. Correct.
16 Q. What was his position?
17 A. At that time I believe it was director
18 of -- it was a director's position. I don't know
19 the exact title.
20 Q. To whom did you report?
21 A. I believe initially I reported -- well,
22 see, I'm a little confused now. Maybe when the
23 creation of that position was started -- when that
24 position was started, it was started by
25 Dr. Tom Osdene.

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1 Q. He was the?
2 A. Director of research.
3 Q. Right. And when you say "started,"
4 what do you mean by that?
5 A. When that project was started.
6 Q. He initiated it?
7 A. Yes.
8 Q. Do you know why he started it?
9 A. No.
10 Q. But he asked you to head up the project
11 I take it?
12 A. That's correct.
13 Q. And you reported to Dr. Osdene?
14 A. I reported to the manager -- to the
15 manager at the time.
16 Q. Can you identify him, please?
17 A. That was Dr. James Charles.
18 Q. I see.
19 And above him was Dr. Osdene?
20 A. That's correct.
21 Q. Now, to whom else did you report over
22 these ten years you were the project leader for
23 electrophysiological studies?
24 A. Let's see if I can get this right.
25 After that, I believe I reported to
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1 Dr. Ted Sanders.

2 And after that, I believe it was

3 Dr. Cathy Ellis.

4 And after that, I believe it was

5 Dr. Richard Carchman.

6 Q. Please spell that last name.

7 A. C-A-R-C-H-M-A-N.

8 Q. Now, did each of these people have a
9 title?

10 A. Yes.

11 Q. And what was that title?

12 A. Manager of biochemical research.

13 Q. With respect to your ten-year tenure as
14 project leader for the electrophysiological studies,
15 did you have people that worked with you or under
16 you?

17 A. That's correct.

18 Q. How many?

19 A. At various times, either one or two
20 people worked with me.

21 Q. Directly with you?

22 A. Yes.

23 Q. How about colleagues? Did you consult
24 with your colleagues with respect to the work you
25 were doing?

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1 A. No.

2 Q. Well, did you write papers?

3 A. I did.

4 Q. Did you write reports?

5 A. I did.

6 Q. Were they reviewed by your colleagues?

7 A. Some of them, yes.

8 Q. What was the purpose of creating -- or
9 excuse me.

10 What was the purpose generally of the
11 electrophysiological study that you were
12 conducting?

13 A. In general, the goal of my project was
14 to understand the mechanisms of what goes on in the
15 central nervous system -- by that I mean the
16 brain -- when people smoke cigarettes.

17 Q. Why was that important?

18 A. It was important to gain a basic
19 understanding of what happens in the central nervous
20 system when people smoke.

21 Q. Okay. What was the methodology you
22 used in general?

23 A. In general it involved two areas, that
24 is, electroencephalography and a related area
25 called evoked potentials or event-related

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1 potentials.

2 Q. The first you're talking about EEG?

3 A. That's correct.

4 Q. Okay. And the second one is?

5 A. Evoked or event-related potentials.

6 Q. Had you administered EEG tests yourself
7 prior to the time you began the work in the
8 biophysiological -- electrophysiological study?

9 A. Yes, I had.

10 Q. And what was your experience there?

11 A. Well, you see, before I went to
12 biochemical studies or --

13 Q. I thought we were calling them
14 biophysiological studies -- electrophysiological
15 studies.

16 A. Well, I had my experience as part of
17 the behavioral research group and as part of my
18 experience at university as well.

19 Q. How was the EEG methodology used in
20 your studies?

21 A. In the human studies, one places
22 electrodes on the scalp and records -- and records
23 from these electrodes, sends them to some kind of
24 amplifiers and then some kind of a visual readout.

25 Q. Well, let me ask some pointed

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1 questions.

2 Who are the people that you used to
3 conduct the studies? Were they employees of
4 Philip Morris or outsiders?

5 A. When I was at Philip Morris, they were
6 internal employees; when I was in Cologne, they were
7 outside subjects.

8 Q. In other words, just German citizens,
9 so to speak?

10 A. That's correct.

11 Q. How many over the years would you say
12 you tested with the EEG?

13 A. Well, that's kind of a difficult
14 question to answer because I used some of these
15 subjects multiple times.

16 Q. Well, you can take that into account.

17 A. As separate cases or --

18 Q. Yeah. Let me ask two questions.

19 A. All right.

20 Q. As a gross number of people, how many
21 subjects did you use?

22 A. Altogether over the course of --

23 Q. Yes.

24 A. -- my employment there? I don't know.
25 I would say 100 to 150.

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1 Q. And how many of those were repeaters?

2 A. I'd say the vast majority of them were
3 repeaters.

4 Q. And among the group you included
5 smokers and nonsmokers?

6 A. That's correct.

7 Q. And the methodology would be to hook up
8 the EEG to someone, have them smoke cigarettes and
9 you could calculate their responses?

10 A. Well, that was one kind of experiment I
11 did, yes.

12 Q. And you wrote papers on that?

13 A. I did.

14 Q. Did you ever publish anything with
15 respect to that part of your methodology?

16 A. No.

17 Q. I know you published overall papers
18 about this, this process, but not just with respect
19 to EEG?

20 A. Sir, could you repeat the question.

21 Q. Yeah. That was not a good question.

22 Did you later publish or at any time
23 publish papers regarding your work in
24 electrophysiology studies?

25 A. At Philip Morris?

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1 Q. Yes.

2 A. Yes.

3 Q. Approximately how many?

4 A. I published one.

5 Q. Okay. Did you assist or consult on the
6 publication of other such papers along with other
7 colleagues?

8 MR. McDONNELL: Excuse me. These are
9 papers on electrophysiology?

10 MR. ADELMAN: Yes. I said "such
11 papers." I'm sorry.

12 THE WITNESS: Colleagues internally
13 with Philip Morris?

14 BY MR. ADELMAN:

15 Q. Professional colleagues either
16 internally or outside of the company.

17 A. Yes, I have.

18 Q. How many?

19 A. Half a dozen to ten I'd say.

20 Q. That's colleagues?

21 A. Yes.

22 Q. All right. Now, again back to the
23 methodology of the EEG, you would hook people up to
24 the EEG, have them smoke and then calculate the
25 results?

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1 A. Actually what I did was I would get a
2 baseline response without smoking, in most of my
3 studies, have them smoke a cigarette and then record
4 a post-smoking response.

5 Q. So you could compare the nonsmoking
6 phenomena with the phenomena shown while smoking?

7 A. Well, I could compare the response
8 before an individual smoked as compared to after an
9 individual smoked, yes.

10 Q. And then you mentioned evolved --
11 evoked potentials --

12 A. Correct.

13 Q. -- as part of the methodology.
14 What was that?

15 A. Well, evoked potentials are part of the
16 EEG, but they're evoked or elicited by some external
17 or internal event.

18 The external event could be a sound or
19 a flash of light or a pattern or something of this
20 nature. And internal events could be things like
21 making a judgment or a decision.

22 Q. In other words, those again would be
23 presented to the subject while he or she is hooked
24 up to the EEG to see their response?

25 A. That's correct.

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1 Q. How did that play into the aspect of
2 the studies done while the person was smoking?

3 MR. McDONNELL: Objection.

4 I think it misstates what he testified
5 to insofar as you said "done while the person was
6 smoking." I think he testified it was done
7 afterwards.

8 MR. ADELMAN: Let me --

9 MR. McDONNELL: I don't mean to --

10 MR. ADELMAN: No. No. That's fine.

11 BY MR. ADELMAN:

12 Q. Was the evoked response done at a
13 separate time from when the person was smoking?

14 A. In the experiments that I did on
15 smoking, what I did was I would record a baseline
16 evoked potential again and then have the person
17 smoke the cigarette and then record a post-smoking
18 response as I did with the EEG.

19 Q. So your method was in effect to have
20 the smoking activity separate from the evoked
21 potentials in terms of sequence?

22 A. In most of my experiments, that's
23 correct.

24 Q. And did you use both EEG and evoked
25 potentials methodology on each person that made up

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1 your studies?

2 A. If I understand your question
3 correctly, I did, yes.

4 Q. And help me here. Over the ten
5 years -- I don't need your help here. You keep
6 calling them studies.

7 Was it one long study or did you do
8 periodic studies at different times?

9 A. I would do periodic studies, would be
10 the best way to --

11 Q. And scientifically, why did you do
12 that?

13 A. Well, what I would do is generate a
14 hypothesis and then try to answer that hypothesis by
15 designing an experiment.

16 Q. Can you tell us what the hypotheses
17 were?

18 A. They varied over the course of my ten
19 years in employment there depending upon specific
20 ideas that I had.

21 Q. Can you give us some examples?

22 A. Well, I could give you an example to
23 say, in very general terms, what would happen to a
24 particular response as one changed the nicotine
25 delivery of a cigarette.

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1 Q. You were interested in that?

2 A. Yes, I was.

3 Q. How many such studies did you do with
4 respect to response to changes in the nicotine
5 content of a cigarette?

6 A. I would guess, with that kind of
7 specific goal in mind, a half dozen or so.

8 Q. Did you record the findings of those
9 studies that you just mentioned?

10 A. Yes.

11 Q. Now, did you determine whether smoking
12 permanently changed a smoker's response to the
13 stimuli?

14 A. No, I did not.

15 Q. Did you try to?

16 A. Yes, I did.

17 Q. What were your results?

18 A. In general terms, if one compared the
19 smokers with the nonsmokers, the response was not
20 different. There was a very short-term change after
21 a person smoked a cigarette which quickly returned
22 to baseline.

23 Q. What was the short-term change?

24 A. If we're talking about specifically
25 with respect to the evoked potential work, there was

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1 a short-term decrease in latency of the primary
2 component of one of the responses.

3 Q. What does that mean?

4 A. Well, a lot of the studies I did
5 involved a kind of evoked potential called the
6 pattern reversal evoked potential. And after a
7 person smoked a cigarette -- well, the pattern
8 reversal evoked potential --

9 Q. PREP?

10 A. Yes -- I'd have to explain a bit about
11 it.

12 Q. Briefly.

13 A. Briefly.

14 There -- one would stimulate the
15 subject with a pattern which changed, which
16 apparently changed, the black-and-white checkerboard
17 would change positions, and every time we -- that
18 changed position we would record a response.

19 And we would summate the responses and
20 we could get a waveform that was basically triphasic
21 with a large positive component to it, and the large
22 positive component would decrease in latency after a
23 person smoked a cigarette.

24 Q. Decreasing in latency means what in
25 simple English?

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1 A. It would -- in simple English, it
2 means it would happen sooner by a few milliseconds.

3 Q. Did you study on that plane the effect
4 of smoking, repeated smoking over time?

5 A. In one or two studies I did.

6 Q. And did you also, in connection with
7 your studies, test people or test their brains
8 actually regarding people who smoked cigarettes that
9 didn't contain nicotine?

10 A. I did.

11 Q. And it's true, is it not, that those
12 studies showed that there was no electrical
13 response in those people's brains, "those people"
14 being people who smoked nicotineless cigarettes;
15 correct?

16 A. Well, let me go back and clarify
17 something.

18 Q. Well, let's understand my question.

19 A. Right.

20 Q. Okay. It's true, isn't it, that when
21 you tested people by having them smoke cigarettes
22 without nicotine --

23 A. Well, that's the part --

24 Q. Excuse me. Let me finish -- there was
25 no electrical response?

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1 I just want that on the table and then
2 you can explain.

3 That's true, isn't it?

4 A. No.

5 Q. All right. Why is it not true?

6 A. It is not true because the
7 cigarettes -- all the cigarettes contained some
8 amount of nicotine.

9 Q. Okay. Maybe I should put it this way.

10 You studied, did you not, the effect of
11 having people smoke lower -- or cigarettes with
12 varying degrees of nicotine?

13 A. That's correct.

14 Q. And you found, did you not, that when
15 people smoked cigarettes with smaller amounts of
16 nicotine than others, that is to say, higher
17 amounts, they showed less electrical response?

18 MR. McDONNELL: Objection to the phrase
19 "less electrical response." I think it's without a
20 foundation in his testimony.

21 MR. ADELMAN: Thank you. I think the
22 witness can answer.

23 THE WITNESS: If a person smoked a
24 cigarette that had very low levels of nicotine,
25 there was usually not a change in the pattern

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1 reversal evoked potential.

2 BY MR. ADELMAN:

3 Q. Okay. Let's follow through on that.

4 If that same person in your test
5 smoked another cigarette with a higher level of
6 nicotine, he would have a greater electrical
7 response; true?

8 MR. McDONNELL: Objection. "Greater
9 electrical response."

10 BY MR. ADELMAN:

11 Q. You can answer.

12 A. Within limits, there was in general a
13 larger effect on the pattern reversal evoked
14 potential with higher-delivery cigarettes than there
15 were with lower-delivery cigarettes up to a certain
16 degree.

17 Q. And just so we're clear, when you say
18 lower and higher-delivery cigarettes, you mean
19 delivery of nicotine?

20 A. That's correct.

21 Q. All right.

22 Did you come to know a person by the
23 name of Dr. Gehrt, G-E-H-R-T, Kobol, K-O-B-O-L?

24 A. Yes.

25 Q. Okay. You can correct me as to how his

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1 name is pronounced.
2 A. It's "Gehrt Kobol."
3 Q. Okay. When did you first meet
4 Dr. Kobol?
5 A. I would say approximately around 1982
6 or so.
7 Q. Where did you meet him?
8 A. At his university in Erlangen.
9 Q. Where, sir?
10 A. Erlangen, E-R-L-A-N-G-E-N.
11 Q. Did you visit him there?
12 A. I did.
13 Q. Did you ever do any scientific studies
14 in conjunction with him?
15 A. Yes.
16 Q. Were any of those studies done in the
17 United States?
18 A. Yes.
19 Q. And during what period of time did you
20 and he do studies in the United States?
21 A. I would say approximately between a
22 period of 1984 to 1990 or so.
23 Q. I'm going to be precise about when it
24 ended.
25 You said "1990 or so." Could that have
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1 been later than 1990?

2 A. Well, yes, it could have been later.

3 Q. Well, when was it?

4 A. We did experiments in the States -- it
5 could have been as late as '92.

6 Q. I take it Dr. Kobol was here in the
7 United States then from 1984 to 1992?

8 A. No.

9 Q. Was he ever here from 1984 to 1992 to
10 your knowledge?

11 A. On -- yes.

12 Q. Well, let's clear this up.

13 Did he come to the United States and
14 work with you during the period 1984 to 1992?

15 A. On occasion, yes.

16 Q. How frequently?

17 A. Approximately once or twice a year.

18 Q. And how long would he stay during those
19 visits?

20 A. As short as one day and as long as two
21 months.

22 Q. And of course we're talking him coming
23 to Richmond; correct?

24 A. That's correct.

25 Q. And was he paid by Philip Morris for

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1 this work?
2 A. Yes.
3 Q. Did Philip Morris pay his travel to and
4 from the United States?
5 A. Yes.
6 Q. Was he an employee of Philip Morris?
7 A. No.
8 Q. He was a contractor?
9 A. Correct.
10 Q. Now, the two of you, Dr. Kobol and
11 yourself, were doing the same research here with
12 respect to the electrophysiological research
13 regarding smoking cigarettes; correct?
14 A. No.
15 Q. What was he doing?
16 A. He was doing for the most part basic
17 studies on the sense of smell.
18 Q. Olfactory studies?
19 A. That's correct.
20 Q. Did he do any work with you on
21 electrophysiological effects of smoking cigarettes?
22 A. No.
23 Q. Were you doing research on the sense of
24 smell?
25 A. Yes.
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INTERIM COURT REPORTING

1 Q. Now, you mentioned he had a position in
2 Germany; correct?

3 A. Yes.

4 Q. And exactly what did he do there?
5 And I'm speaking of the time period
6 1984 to 1992.

7 A. He was a professor C-3 in the -- let
8 me -- in I believe the Institute of Pharmacology at
9 the University of Erlangen.

10 Q. Okay. Did he have any private business
11 over there?

12 A. I believe he had a software company.
13 Yes.

14 Q. Nothing else?

15 A. Not to my knowledge, no.

16 Q. Okay. Now, you've mentioned already
17 something called INBIFO, in the acronym.

18 When did, if you are aware, INBIFO
19 start to function?

20 A. I don't know that.

21 Q. Well, when was your first knowledge
22 that INBIFO existed?

23 A. Shortly after my employment with
24 Philip Morris.

25 Q. That's in 1977 or so?

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1 A. That's correct.
2 Q. Okay. Let's say the period from '77 to
3 1992, did INBIFO exist as a separate entity as far
4 as you know?
5 A. I'm not really sure I understand what a
6 separate entity is.
7 Q. Well, did it have offices?
8 A. Yes.
9 Q. Where were they located?
10 A. In Cologne.
11 Q. Did you ever visit there during that
12 period '77 to '92?
13 A. Yes.
14 Q. Did Dr. Kobol have any connection with
15 INBIFO from 1977 to 1992?
16 A. Yes.
17 Q. And what was his connection?
18 A. His connection was he was funded by
19 INBIFO for various experiments.
20 Q. Did Philip Morris have any connection
21 with INBIFO?
22 A. Yes.
23 Q. What was its connection, if you know?
24 A. Philip -- INBIFO is a wholly owned
25 sister company of Philip Morris.
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1 Q. And what were the functions, if you
2 know, of INBIFO from 1977 to 1992?

3 A. Well, with various laboratories they
4 did various kinds of studies for the company.

5 Q. They did research for the Philip Morris
6 company regarding cigarette smoking; right?

7 A. No.

8 Q. What type of research?

9 A. Mainly cell research, if I know
10 correctly.

11 Q. Did that have anything to do directly
12 or indirectly with smoking cigarettes?

13 A. Indirectly.

14 Q. How did it have an indirect relation to
15 smoking cigarettes?

16 A. It had to do with studying biological
17 effects of cigarette smoke condensate for the most
18 part.

19 Q. Before 1992, to your knowledge, had
20 INBIFO over there in Germany ever done any research
21 on electrophysiological studies?

22 A. To my knowledge, no.

23 Q. Have you at any time ever published a
24 paper, article or anything else with Dr. Kobol?

25 A. No, I have not.

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INTERIM COURT REPORTING

1 Q. Okay. Now, may I ask you whether you
2 have been deposed before today?
3 A. I have.
4 Q. On how many occasions?
5 A. Three separate occasions.
6 Q. Do you recall them?
7 A. Yes. One was the Frosina case in
8 New York.
9 Q. All right. When was that deposition?
10 A. I think it was in the fall of last
11 year.
12 Q. '97?
13 A. I think that's correct, yeah.
14 Q. You're calling that case "Prosina"?
15 MR. McDONNELL: Frosina. It's a class
16 action with different characters
17 BY MR. ADELMAN:
18 Q. Yes. Yes. All right.
19 For the record, that's September 4,
20 1997; correct?
21 A. That sounds right, yes.
22 Q. All right. Do you recall the other
23 cases?
24 A. The other two cases were the Engle
25 case --
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1 Q. You're saying Engle, E-N-G-L-E?
2 A. That's correct.
3 Q. And that was May 26, 1998 in Richmond?
4 A. That sounds right, yes.
5 Q. And the third case?
6 A. That was the State of Maryland AG
7 case.
8 Q. And that, if I'm not mistaken, was
9 August 19, 1998?
10 A. That sounds right.
11 Q. Have you ever been deposed at any other
12 time?
13 A. No, I have not.
14 Q. Have you ever given public testimony
15 regarding tobacco in any forum?
16 A. No.
17 Q. Let me sharpen that question.
18 You testified in earlier depositions
19 that you had appeared in front of a federal grand
20 jury?
21 A. That's correct.
22 Q. Now, of course that would be private
23 testimony and that's understood.
24 A. That's correct.
25 Q. All right. And I don't want to track
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1 the questioning you went over before, but I do want
2 to ask you this. A couple points.

3 Do you recall how long approximately
4 you testified?

5 A. I testified before the grand jury on
6 two separate occasions, one full day and one half
7 day.

8 Q. When? Do you know?

9 A. I believe one was in February and one
10 was in March, if memory serves.

11 Q. Of this year?

12 A. Yes.

13 Q. Where were the grand juries sitting?

14 A. In Washington.

15 Q. Both times?

16 A. Correct.

17 Q. And you were represented by counsel?

18 A. That's correct.

19 Q. In the sense that he was outside the
20 grand jury room and you could consult with him?

21 A. That's correct.

22 Q. I don't want to go into the details of
23 your testimony because that's been tracked and
24 there's been some issues raised there, but I do want
25 to ask you this, and I think I can.

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1 Did you at any time in response to any
2 question asked of you in the grand jury refuse to
3 answer based on the Fifth Amendment?

4 MR. McDONNELL: Well, I will object to
5 that on behalf of Philip Morris on the ground that
6 that is protected by the confidentiality or secrecy
7 provisions of the grand jury.

8 I would withdraw the objection if
9 counsel is prepared to stipulate that if
10 Dr. Gullotta answers that question it will not be a
11 waiver of any right he has not to testify about any
12 other aspects of his grand jury testimony.

13 MR. ADELMAN: I think we'll let the
14 record stand. We may revisit that later, if that's
15 all right. I'll take your objection at this point.
16 Okay?

17 MR. McDONNELL: But you --

18 MR. ADELMAN: I hear you.

19 MR. McDONNELL: You decline to
20 stipulate at this point?

21 MR. ADELMAN: Well, at this point,
22 right. We'll just leave the matter stand as it is.
23 Okay?

24 BY MR. ADELMAN:

25 Q. Let me ask you this.

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1 Have you been summoned or requested to
2 come back to the grand jury?

3 A. No, I have not.

4 Q. Have you spoken to government
5 investigators in connection with this grand jury
6 investigation? Outside of the grand jury.

7 A. I have.

8 Q. Okay. In connection with your
9 preparation for this proceeding, this deposition
10 today, did you read any of the deposition -- the
11 transcripts of any of the three depositions you
12 mentioned a moment ago that you gave earlier?

13 A. I did.

14 Q. All three of them?

15 A. No, I did not.

16 Q. Which ones did you read?

17 A. I read the last one that I gave in the
18 state of Maryland I believe.

19 Q. You didn't read the other two?

20 A. No, I did not.

21 Q. Now, you've already told us that you
22 spent three years in Germany?

23 A. That's correct.

24 Q. When did you go to Germany?

25 A. That was -- for employment do you

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1 mean?

2 Q. Yes, sir.

3 A. That was in October of 1992.

4 Q. That's at INBIFO?

5 A. INBIFO, yes.

6 Q. Were you directed to go there by anyone
7 at Philip Morris?

8 A. I was asked to go there.

9 Q. Who asked you?

10 A. I believe it was my manager at the
11 time, who was Dr. Richard Carchman.

12 Q. Are you sure?

13 A. Fairly sure, yes.

14 Q. Now, why was it, if you know --
15 withdraw that.

16 What did he tell you as to why you
17 should go to Germany and work at INBIFO?

18 A. Well, there were several reasons that
19 he gave me.

20 One had to do with getting more
21 involved with the olfactory work with Dr. Kobol in
22 Germany, since INBIFO was doing the -- funding these
23 people down there quite a bit.

24 The other reason had to do with being
25 able to get external ethical review of my

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1 experiments that I would be doing at INBIFO.

2 And the other reason was Philip Morris
3 was -- USA was experiencing head count reductions
4 and there was always a possibility of my work being
5 terminated, but if I went to INBIFO, that would be
6 considered a head count reduction for USA and they
7 could still maintain my work.

8 Q. Any other reasons you claim he gave
9 you?

10 MR. McDONNELL: Objection. He's
11 testifying. You don't have to --

12 THE WITNESS: Not that I recall at the
13 moment.

14 BY MR. ADELMAN:

15 Q. Well, let me put it to you this way.

16 Have you ever recalled -- are there any
17 other reasons that you recalled earlier that you
18 don't recall now?

19 A. There could be, yes.

20 Q. And using that as a predicate so we
21 can understand each other, what might they have
22 been?

23 MR. McDONNELL: Objection. He's --

24 MR. ADELMAN: I'm trying to test his
25 memory.

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1 THE WITNESS: I wish I could help you
2 there, but it's not coming to me at the moment.

3 BY MR. ADELMAN:

4 Q. But there was a time -- or was there a
5 time that you knew more reasons than these three for
6 why you were asked to go to Germany?

7 A. I can't tell you that because I don't
8 remember.

9 Q. Was it ever suggested to you by
10 Dr. Carchman or anybody else that you should go to
11 Germany because of the nature of the research you'd
12 been conducting in the United States?

13 A. No.

14 Q. Was it ever suggested to you by
15 Dr. Carchman or anyone else that you should go to
16 Germany because of the results and findings that you
17 had in your research?

18 A. I beg your pardon?

19 Q. Yes.

20 Did Dr. Carchman or anybody else ever
21 suggest to you that you should go to Germany in 1992
22 because of the results or findings that you had
23 acquired in your research?

24 A. No.

25 Q. When you -- well, withdrawn.

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INTERIM COURT REPORTING

1 The reasons that you announced here,
2 Dr. Carchman's reasons, include you becoming
3 involved more in the olfactory studies?

4 A. Yes.

5 Q. Had you done any olfactory research
6 while at Philip Morris in Richmond?

7 A. Yes.

8 Q. With regard to another reason given
9 here by you for Dr. Carchman's point of asking you
10 to move over to Germany, you said you could get
11 external ethical review of your experiments?

12 A. That's correct.

13 Q. All right. Let me see if I can
14 understand this.

15 Does this mean that you could have
16 non-Philip Morris employees smoke those cigarettes
17 and you could test them?

18 A. No.

19 Q. What's it mean?

20 A. Well, it means there was a commission
21 in Germany called the Freiburg Commission which
22 could review -- which had -- which followed FDA
23 guidelines and could provide ethical review for
24 human research which is not available to me from not
25 being associated with a university.

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1 Q. In other words, you're saying that as
2 an employee of a private company in the
3 United States you couldn't do human research with
4 people who didn't work for the company?

5 A. I guess what I'm saying is we did not
6 have the facilities in-house to do that kind of
7 internal review.

8 Q. What do you define ethical review to
9 be?

10 A. Well, it -- it involves looking at the
11 experimental protocol and looking at the validity of
12 the research and the safety of the research with
13 respect to subjects either animal or human.

14 Q. And help me here. Are you saying that
15 in the United States that that can be done in the
16 university setting with FDA approval?

17 A. That's correct.

18 Q. But to continue my point, that it can't
19 be done in the United States without FDA approval in
20 private businesses?

21 A. There is no equivalent of this ethics
22 review committee in the United States that I know
23 of.

24 Q. You mentioned early in your
25 testimony -- and help me here -- you mentioned early

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1 in your testimony that you, while you were at
2 Philip Morris Richmond, used people in-house,
3 Philip Morris employees to do the smoking in your
4 tests; right?

5 A. That's correct.

6 Q. And you didn't use external people?

7 A. That's correct.

8 Q. Then you told me that you used external
9 people in Germany?

10 A. That's correct.

11 Q. And does your ability to use external
12 people in Germany flow from the fact that you were
13 able to proceed under the authority I guess of the
14 Freiburg Commission?

15 A. That's correct.

16 Q. Is there any scientific advantage to
17 using external people in these tests?

18 A. Scientific? I'd have to think about
19 that. Probably not.

20 Q. Well, then why would you want to use
21 them?

22 A. Well, I was prevented from using
23 internal people by union considerations in Germany.

24 Q. I see.

25 So by necessity in Germany you had to

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1 use outside people?

2 A. That's correct.

3 Q. And what was the nature of the ethical
4 review that the Freiburg Commission did during the
5 three years while you were over there with INBIFO?

6 A. Well, once we obtained that approval
7 from our -- from the ethics review board, then we
8 could get subject insurance, then we could get
9 approval from the German government, and then we
10 could proceed with our experiment.

11 Q. And did you conduct experiments during
12 your three years term over there at INBIFO?

13 A. I conducted an experiment, yes.

14 Q. Just one?

15 A. One major experiment, yes.

16 Q. What was the name of that, if you
17 will?

18 A. I think the title was: The Subjective
19 and Electrophysiological Effects of Smoking
20 Cigarettes with Constant Tar But Varying Nicotine
21 Levels.

22 Q. Did you ever write a report on that?

23 A. I did.

24 Q. Was it published?

25 A. Internally.

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1 Q. When was that report completed?

2 A. I believe the date on the completion
3 report is October or November 1995.

4 Q. Now, you're aware, are you not, that
5 there's an outstanding request in this case for
6 production of documents with respect to you? Do you
7 know that?

8 A. That's my understanding. Correct.

9 Q. And this report would be covered by
10 that request; isn't that correct?

11 A. That's correct.

12 Q. All right. But to your knowledge it
13 hasn't been produced to plaintiffs at this time?

14 A. Well, I really don't know how to answer
15 that because it -- a version of that report was
16 copied for production in this case.

17 Q. What do you mean by "a version"?

18 A. I had to send away the copy of that
19 report that was assigned to me and so I borrowed a
20 copy from another colleague so that I could write it
21 up for publication.

22 Q. Was that produced?

23 A. It was.

24 Q. So if I'm understanding you correctly,
25 your October 1995 report regarding this study was in

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1 fact produced in connection with this case?

2 Perhaps counsel could help you.

3 MR. McDONNELL: Yeah. Could I?

4 I'm not sure -- when you say

5 "produced," I assume you mean produced into the
6 Minnesota depository.

7 MR. ADELMAN: Well, you might help us
8 there. There is an outstanding production request
9 in this case, and that's really what I'm focusing
10 on.

11 MR. McDONNELL: I don't know whether
12 that document that you've raised with Dr. Gullotta
13 has been produced into the Minnesota depository or
14 not.

15 I understand you may be laying a
16 predicate for further deposition of Dr. Gullotta,
17 and again I want to just put on the record that we
18 offered to postpone this deposition until such time
19 as any documents you want could be produced.

20 My understanding is that the plaintiffs
21 said we want to go forward with the deposition with
22 or without all current documents.

23 So I don't know whether it's been
24 produced or not, but I want to be sure that I'm --
25 that my position on redeposition of Dr. Gullotta is

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1 on the record.

2 MR. ADELMAN: Fine. Our position again
3 is that we reserve the right to redepose him at a
4 later time, just so you understand.

5 MR. McDONNELL: I understand your
6 position.

7 MR. ADELMAN: All right.
8 BY MR. ADELMAN:

9 Q. Okay. Now, during your three years at
10 INBIFO, what else did you do besides this one major
11 experiment that you just described in your
12 testimony?

13 A. I did some collaboration with a
14 colleague who was doing electrophysiological studies
15 on frogs.

16 I did some pilot experiments on the
17 effects of odors on the pattern reversal evoked
18 potential.

19 I did consulting with the people in
20 Richmond and the people down in Erlangen.

21 I developed a certain -- a number of
22 concepts to do studies and conducted ordinary
23 business such as attending meetings.

24 Q. During the period 1992 to 1995 when you
25 were at INBIFO, how many people were employed

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INTERIM COURT REPORTING

1 there?
2 A. I'd say approximately 75.
3 Q. And Dr. Kobol was in charge of all of
4 them?
5 A. Oh, excuse me. Dr. Kobol was not at
6 INBIFO. He was at Erlangen.
7 Q. So he was not at INBIFO at all?
8 A. Only to visit.
9 Q. When you were over there at INBIFO
10 during those three years, were you paid by
11 Philip Morris?
12 A. Philip Morris International, correct.
13 Q. To whom did you report during those
14 three years while you were at INBIFO?
15 A. My direct report was Dr. Hans-Juergen
16 Haussmann.
17 Q. Who is he?
18 A. He was -- he was a director of a
19 section, one of four sections of INBIFO, and I
20 believe the title of that section was biological
21 research. I could be wrong.
22 Q. Did you take any of your staff over to
23 INBIFO?
24 A. No.
25 Q. Did you take any documents or records
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1 over to INBIFO?
2 A. Yes.
3 Q. What documents and records did you take
4 over?
5 A. Basically I took over copies of the
6 studies I had done in Richmond.
7 Q. What else did you take over?
8 A. Books and EEG equipment, recording
9 equipment.
10 Q. You say copies of the studies;
11 correct?
12 A. Yes.
13 Q. Did you take the underlying data over
14 there with you, too?
15 A. For the most part, no.
16 Q. That means you did take some underlying
17 data?
18 A. That's correct.
19 Q. What would the underlying data be?
20 A. Those would be the results from
21 experiments for which I had not yet interpreted the
22 results.
23 Q. In terms of volume, how much would that
24 underlying data that you took over there
25 constitute?
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1 A. The results of maybe two or three
2 studies I would say.
3 Q. Well, I asked you in terms of volume.
4 A. Volume?
5 Q. Uh-huh.
6 A. One small records box I would say.
7 Q. One of those boxes that's about 10 by
8 14 by 18; is that right (indicating)?
9 A. Well, yeah (indicating).
10 Q. Well, you're making -- for the record,
11 you're showing us something about 24 by 12?
12 A. Well --
13 Q. You tell us.
14 A. Well, it's the kind of a box that you
15 would hang hanging folders in, about that size.
16 MR. McDONNELL: If we said a bankers
17 box, would that --
18 BY MR. ADELMAN:
19 Q. Is that what you're talking about, what
20 lawyers call a bankers box?
21 A. Sorry. I have no idea.
22 Q. Look, there's a square there behind the
23 court reporter that I would say is about 15 by 24.
24 Is it about that size?
25 A. Can I get up and take a look without
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1 disrupting things?

2 Q. As far as I'm concerned you can, sure.

3 For the record, the witness is looking
4 at a part of the table here in the conference room
5 to give us an idea of the size of the box.

6 A. What am I looking at?

7 Q. This large --

8 MR. McDONNELL: The wooden?

9 MR. ADELMAN: Yeah.

10 THE WITNESS: No. It was smaller than
11 that

12 BY MR. ADELMAN:

13 Q. Okay. So we're somewhere between a
14 bankers box and a hanging file box. I think I'll
15 leave it at that.

16 A. Okay.

17 Q. You can put your mike on.

18 (Pause in the proceedings.)

19 MR. McDONNELL: Would this be a good
20 time to take a few minutes break?

21 MR. ADELMAN: Yes. I'd suggest ten
22 minutes.

23 THE VIDEOGRAPHER: We're going off the
24 record 9:39:50.

25 (Recess)

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THE VIDEOGRAPHER: On record 9:58:45.

BY MR. ADELMAN:

Q. All right, Doctor. Are you ready to proceed with the deposition?

A. I am.

Q. All right, sir.

The third reason that you recall today that Dr. Carchman said you would have to go to INBIFO was that at that time there was a head count reduction underway at Philip Morris; is that right?

A. That's correct.

Q. And was the point being made to you that you could -- or you would be terminated if you stayed at Richmond?

A. I believe that was brought up as a possibility, yes.

Q. And therefore, since you could be terminated if you stayed at Richmond, you could go to INBIFO and still continue your employment?

A. That's correct.

Q. When you went to INBIFO, did you take your family?

A. My wife came over later. Yes.

Q. When?

A. After I was there about a year.

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1 Q. When you went to INBIFO, were there any
2 documents, letters, memos or writings created
3 showing the transfer?

4 A. I believe there was.

5 Q. What would be the form of those
6 writings?

7 A. I don't recall.

8 Q. Well, let me help you and be more
9 precise.

10 Were there internal memoranda, for
11 instance, a transfer of duty station or a memo
12 saying that from this point on you're working at
13 INBIFO, something of that sort?

14 A. I recall that I had to go to New York
15 to sign papers to transfer to Philip Morris
16 International.

17 Q. Well, did you get any letters from
18 anybody saying that you would be transferred?

19 A. That, I don't recall.

20 Q. When did you first speak to
21 Dr. Carchman about being transferred to INBIFO?

22 A. It was about February of 1992.

23 Q. And when did you actually go to
24 INBIFO?

25 A. In October of 1992.

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1 Q. When were you told that you were going
2 to INBIFO?
3 A. Probably in about June of '92.
4 Q. Did you indicate you didn't want to go
5 to INBIFO, that you wanted to stay in Richmond?
6 A. No, I did not.
7 Q. Did you in fact want to go to INBIFO?
8 A. Yes, I did.
9 Q. Were you given a title or a position at
10 INBIFO?
11 A. Yes, I was.
12 Q. What was that?
13 A. My title at INBIFO was manager of
14 sensory physiology.
15 Q. Were you given an increase in
16 compensation when you went to INBIFO?
17 A. No.
18 Q. Were you given a reduced compensation?
19 A. Let me clarify that. I was given a
20 cost-of-living adjustment.
21 Q. So you're saying you got the same
22 salary with a cost-of-living adjustment when you
23 were at INBIFO?
24 A. That's correct.
25 Q. Was your salary or compensation
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1 increased during at any time during the three-year
2 period while you were at INBIFO?

3 A. It was.

4 Q. When?

5 A. At the normal times that one receives
6 raises.

7 Q. And what is that in Philip Morris?

8 A. It -- at the time it was once a year
9 based upon your employment, the time you --

10 Q. So what you're saying is you got
11 regular increases?

12 A. That's correct.

13 Q. How long did your wife stay when she
14 came over?

15 A. She stayed until about a month or six
16 weeks before I went back.

17 Q. So she stayed about a year and a half?

18 A. That's correct.

19 Q. When you initially went over to INBIFO,
20 how long was it by your understanding that you were
21 to be there?

22 A. My understanding was up to five years.

23 Q. At whose option?

24 MR. McDONNELL: Objection.
25 Foundation.

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1 BY MR. ADELMAN:

2 Q. Well, do you know who it was who would
3 determine when you came back within that five-year
4 period?

5 A. I would assume that it would have been
6 the management of Philip Morris USA.

7 Q. Well, would you have had any say?

8 A. Yes.

9 Q. And you in fact did come back three
10 years after 1992, that is, in the fall of 1995;
11 correct?

12 A. That is correct, sir.

13 Q. And why is it you came back?

14 A. Because I asked to.

15 Q. Why?

16 A. Because I wanted to take on other
17 responsibilities.

18 Q. Did you do that?

19 A. I did.

20 Q. When you came back, what are the
21 responsibilities that you took on?

22 A. My responsibilities at the time were to
23 oversee external funding, to review the literature
24 in the areas of neuropsychopharmacology, and to
25 become a company expert in the area of

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1 neuropharmacology.
2 Q. Put your answer in context here.
3 What you just described is what you
4 did upon your return to the United States in 1995?
5 A. That's correct.
6 Q. Are you still doing those tasks now?
7 A. Basically correct, yes.
8 Q. Do you have any additional tasks?
9 A. Yes.
10 Q. What are they?
11 A. To assist the company on scientific
12 issues --
13 Q. Like --
14 A. -- relevant to the business.
15 Q. Like an adviser?
16 A. That's correct.
17 Q. You're not doing any research now?
18 A. That's correct.
19 Q. And you haven't done any research since
20 you came back in 1995?
21 A. That's correct.
22 Q. And you're not doing any
23 electrophysiological studies since you came back in
24 1995?
25 A. That's also correct, yes.
0059

INTERIM COURT REPORTING

1 Q. Didn't you state that you were
2 surprised by the rapidity of your transfer over to
3 Germany in 1992?

4 A. I did. I think I did that at one time,
5 yes.

6 Q. How rapidly were you transferred over
7 there?

8 A. Well, from the first time I learned
9 about it to -- which was probably in February, to
10 October when I actually transferred.

11 Q. Now, I thought that the decision
12 actually to send you there was made sometime after
13 February?

14 A. I'm sorry, sir. I misunderstood your
15 question. I thought it was from the time I learned
16 about it, of the time I had the first discussion
17 until I went over there.

18 Q. Didn't you tell someone that you were
19 surprised of the rapidity with which you were
20 transferred to INBIFO?

21 A. I did.

22 Q. Well, what did you mean by "rapidity"?

23 A. Well, when it was initially discussed,
24 I thought I would be going over in '96. I didn't
25 realize that I would be going over as early as the

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INTERIM COURT REPORTING

1 fall of '95.

2 Q. Who was it who decided that you should
3 go in the fall of '95?

4 A. I don't know.

5 Q. Was it Dr. Carchman?

6 A. It could have been.

7 Q. But it wasn't you?

8 A. No.

9 Q. Didn't you also tell someone that you
10 were caught off guard by the sudden transfer over to
11 Germany?

12 A. I could have, yes.

13 MR. ADELMAN: Let me have these marked
14 as Exhibit Number 1, Ms. Reporter.

15 Mr. Witness, I'm going to show you the
16 marked copy if you don't mind; that's just for your
17 counsel.

18 (Gullotta Exhibit No. 1
19 was marked for identification and is
20 annexed hereto.)

21 BY MR. ADELMAN:

22 Q. Exhibit 1 is there for your review,
23 Doctor. It's three pages, and please review it to
24 your satisfaction.

25 A. All right. Thank you.

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INTERIM COURT REPORTING

(Pause in the proceedings.)

Okay.

Q. Have you reviewed the three pages of Exhibit 1 to your satisfaction?

A. I have.

Q. All right. These are organizational charts, are they not?

A. They are.

Q. And do you see your name in each case on the chart under Behavioral Research?

A. I do.

Q. Looking at them, can you tell us -- or withdrawn.

This also shows the research -- is it division?

A. Directorate.

Q. Research -- no. But what's the name of the unit? Is it called research division or research --

A. It's directorate.

Q. Directorate. I'm sorry.

A. Yes.

Q. -- the research directorate during the time Dr. Osdene was the director; correct?

A. That's correct.

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INTERIM COURT REPORTING

1 Q. Can you tell us by looking at these
2 three exhibits what years or what time period they
3 reflect the organization of the research
4 directorate?

5 A. From my time there in 1977, from
6 about '77 to '81 or '82 I would say.

7 Q. And that's because it shows Dr. Osdene
8 as the director?

9 A. Among other reasons, yes.

10 Q. All right. Perhaps you might look at
11 the third page.

12 A. All right.

13 Q. You're listed under Behavioral
14 Research?

15 A. That's correct.

16 Q. The third listing down.
17 Is there any reason you're put in that
18 third position? Is this a pecking order of some
19 sort?

20 A. It is ranked by level on the
21 professional ladder I would say.

22 Q. So the answer to my question is yes?

23 A. Yes.

24 Q. All right. Why do you have an
25 asterisk, if you know, next to your name?

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INTERIM COURT REPORTING

1 A. Asterisks indicate people with Ph.Ds.

2 Q. And then after your name in capital
3 letters is RP. What does that mean?

4 A. Research professional.

5 Q. You worked and consulted with the
6 people in behavioral research, didn't you?

7 A. I worked with the people in behavioral
8 research, correct.

9 Q. And you consulted with them?

10 A. I don't know how you're using that
11 term.

12 Q. All right. They reviewed your work,
13 you reviewed theirs, and you consulted about
14 scientific and professional matters?

15 A. Yes.

16 Q. All right. If you'll move to the
17 second page.

18 A. All right.

19 Q. You're still there; you're the number
20 three person on the chart for behavioral research?

21 A. That's right.

22 Q. Can you tell us whether that chart is
23 earlier in time or later in time than the one on
24 page 3?

25 A. I believe it's later in time.

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INTERIM COURT REPORTING

1 Q. Now, there, above you is a gentleman --
2 it says V. DeNoble?
3 A. Uh-huh.
4 Q. Who is V. DeNoble?
5 A. His name -- that was Victor DeNoble.
6 He was a Ph.D. in behavioral research.
7 Q. Did you know Mr. Victor DeNoble?
8 A. I did.
9 Q. What kind of research was he doing?
10 A. He was doing basic behavioral
11 pharmacology.
12 Q. Was he doing animal behavior projects?
13 A. That's correct.
14 Q. Do you know offhand -- well, do you
15 know, period, when he served there at Philip Morris,
16 what his tenure was?
17 A. If I had to make a guess, it would be
18 in the early '80s.
19 Q. Maybe I should --
20 A. From late '70s until early '80s.
21 Q. In other words, he left at some point
22 in the early '80s?
23 A. That's correct.
24 Q. You're aware that his animal research
25 project was terminated?
0065

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1 A. I was aware of that.
2 Q. Who made you aware of that?
3 A. I don't know.
4 Q. Did you talk to him about it?
5 A. No, I did not.
6 Q. Do you know why it was terminated?
7 A. No, I didn't.
8 Q. Do you know any of the results of his
9 animal research project?
10 A. Some of the results.
11 Q. And what are they?
12 A. Well, he did experiments on things like
13 self-administration, nicotine discrimination, and a
14 phenomenon called prostration.
15 Q. Before we go on, let's define terms.
16 You mean self-administration of
17 nicotine?
18 A. Nicotine -- my understanding is
19 nicotine and nicotine-like compounds, yes.
20 Q. And prostration means what?
21 A. It is a phenomenon that happens when
22 you stick nicotine or nicotine-like compounds into
23 an area of the brain called the third ventricle or
24 fourth ventricle. I can't remember which now.
25 Q. In other words, inject nicotine in a
0066

INTERIM COURT REPORTING

1 part of the brain?

2 A. Yes.

3 Q. And what were the results that you're
4 aware of?

5 A. Well, the results that I was aware of
6 is that if you injected nicotine into this ventricle
7 you produced a syndrome called the prostration
8 syndrome where the animal would become basically
9 flaccid for some period of time. And if memory
10 serves me correctly, nicotine-like compounds would
11 also produce that effect to a greater or lesser
12 extent.

13 Q. To put it in lay terms I guess, and
14 forgive me, what you're saying is the DeNoble
15 research regarding the injection of nicotine or a
16 nicotine-like substance into the part of the brain
17 made the animal pass out?

18 A. Not quite, sir. To my understanding,
19 they were still for all intents and purposes awake,
20 but they were splayed out.

21 Q. Flaccid you're using?

22 A. Indeed.

23 Q. Did you ever talk to Dr. DeNoble about
24 his research?

25 A. On occasion I did.

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INTERIM COURT REPORTING

1 Q. Did you ever talk to him after he left
2 or his research was terminated by Philip Morris?

3 A. No, I did not.

4 Q. The third chart is actually the first
5 page here, and now you're in number one position, so
6 can you give us a time frame for that?

7 A. I'm sorry, sir.

8 Q. It's the first page -- yeah, I don't
9 want it being confusing. It's the first page of the
10 exhibit.

11 A. Oh, back here again.

12 Q. But now you're number one; correct?

13 A. Yes.

14 Q. When in time was that? Do you know?

15 A. That could have been in 1977 or 1978.

16 Q. Well, if the chart showing you in the
17 number one position was in the '77 or 78 period, why
18 is it that you are down the chart in the later, what
19 apparently are later charts on pages 2 and 3?

20 A. Well, let me try to explain this.

21 If we specifically compare chart 3 with
22 chart 1, you'll notice that there's an RP after the
23 first four individuals there and they're listed
24 alphabetically.

25 On chart 3, the person that has an ASP

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1 behind their name is of a higher rank, and then it's
2 listed alphabetically by the people at the same
3 rank.

4 Q. All right. Let me ask you globally.
5 Were any of the people depicted on
6 these charts working with you on the
7 electrophysiological research?

8 A. Yes.

9 Q. Which ones?

10 A. Can we go through it by chart?

11 Q. Yeah. Just give us their names.

12 A. Okay. On the first one, it's
13 E.C. Gay.

14 Q. Okay.

15 A. On the second one -- no, I don't know
16 who it was there. It was -- it was -- oh,
17 C.J. Shultz. I'm sorry.

18 Q. All right.

19 A. And on the third one, it's
20 A.S. Frankovitch.

21 Q. Are any of those people you just
22 mentioned still working for Philip Morris?

23 A. Yes.

24 Q. Which ones?

25 A. C.J. Shultz.

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INTERIM COURT REPORTING

1 Q. And the other two aren't; right?
2 A. That's correct.
3 MR. ADELMAN: Okay. Thank you.
4 Let me ask the reporter to mark this as
5 Exhibit Number 2, please.
6 (Gullotta Exhibit No. 2
7 was marked for identification and is
8 annexed hereto.)
9 BY MR. ADELMAN:
10 Q. Do you recognize Exhibit Number 2,
11 being a two-page document?
12 A. I do.
13 Q. What is it?
14 A. It is a monthly project report for
15 project 1600.
16 Q. And it shows in effect subprojects
17 under that number 1600?
18 A. It does.
19 Q. And the report is to Mr. Dunn who was
20 the project leader?
21 A. That's correct.
22 Q. Now, your contribution here is a
23 projected title Psychophysiology of Smoking?
24 A. Yes.
25 Q. And this must have been one of your
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INTERIM COURT REPORTING

1 first tasks since you joined in 1977?
2 A. Correct.
3 Q. Now, I don't want to read what
4 you've -- it's only one paragraph there.
5 But did you in fact do the study that
6 you're projecting to do there?
7 A. May I read it?
8 Q. Oh, sure.
9 A. Thank you.
10 Q. Yeah. Read it to your satisfaction.
11 (Pause in the proceedings.)
12 A. Yes, I did that.
13 Q. You did that study?
14 A. Yes.
15 Q. In the third paragraph of --
16 withdrawn.
17 Are you the one that wrote that
18 paragraph?
19 A. That first paragraph?
20 Q. Yeah, that it's -- just so we're clear
21 on the record, it says, "Project title:
22 Psychophysiology of Smoking. Written by:
23 F.P. Gullotta," and then there are three sentences
24 making up one paragraph.
25 Did you write that three sentences?
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INTERIM COURT REPORTING

1 A. Yes, I did.

2 Q. And it says there in the third
3 sentence, "Additional data will be obtained when the
4 new experimental cigarettes which are being
5 manufactured for Dr. Levy are received."

6 What were the new experimental
7 cigarettes you're referring to?

8 A. I believe those, if memory serves me
9 correctly, those were cigarettes that had been
10 extracted of nicotine by the steam ammonia process
11 and that nicotine was then sprayed back on on
12 various levels.

13 Q. Did you use these new experimental
14 cigarettes in your studies?

15 A. To the best of my recollection, I did,
16 yes.

17 Q. In what way did you use them?

18 A. Initially I used them to conduct
19 studies on heart rate and then later to conduct EEG
20 studies.

21 Q. You mentioned that these new
22 experimental cigarettes are being manufactured for
23 Dr. Levy, and I see, if you'll look with me here, in
24 Dr. Levy's part of this report he says there -- I'm
25 at the middle of the page, Doctor.

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1 A. Okay.

2 Q. Dr. Levy's contribution says, "Project
3 title: Smoking of Low Nicotine Cigarettes. Written
4 by: C.J. Levy," quoting, "We are still awaiting our
5 new batch of cigarettes."

6 I take it he's referring to the same
7 batch of experimental cigarettes you're talking
8 about?

9 A. I would assume that, yes.

10 Q. And the idea in your part of the study
11 was to compare physiological results from the test
12 group of smokers regarding various levels of
13 nicotine in cigarettes?

14 A. That's right.

15 Q. But here the nicotine was not inherent
16 in the tobacco, so to speak, but was sprayed on?

17 A. It was first extracted and then sprayed
18 on.

19 Q. What scientific purpose was there for
20 doing that, in other words, for extracting the
21 nicotine and then spraying it on?

22 A. Experimental control basically.

23 Q. What you're saying is that you could
24 control with some precision the amount of nicotine
25 in a cigarette by spraying it on because then you

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1 could adjust the spray, so to speak?

2 A. Well, in a lot of the experiments we
3 did we were interested in nicotine and not the tar
4 content of the cigarette, and so we had to keep the
5 tar level constant but to vary the nicotine.

6 Q. Okay. But still my question persists,
7 which is: You could scientifically alter the
8 nicotine level more efficiently by just spraying it
9 on rather than having to depend on the nature of
10 nicotine in a particular cigarette; right?

11 A. I don't think we looked at it like
12 that. I think we looked at --

13 Q. Well, maybe you did it but -- go
14 ahead. I'm sorry.

15 A. I think we looked at it as being able
16 to hold everything else constant except for the
17 nicotine.

18 Q. I think we're saying the same thing.

19 A. Oh, okay.

20 Q. I'm a layman, if you'll forgive me.
21 Did you do psychophysiological tests on
22 the effect of various levels of nicotine in the
23 cigarettes that were smoked by people in this
24 study?

25 A. What specific tests are you speaking

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INTERIM COURT REPORTING

1 of?

2 Q. Well, I'm using the general phrase
3 "psychophysiological testing" that you're using in
4 the project title.

5 A. Well, in this particular project I'm
6 looking at the effects on heart rate, yes.

7 Q. Do you recall what you found?

8 A. Yes, I do, to some extent.

9 That under the conditions of my
10 experiments that cigarettes containing a sufficient
11 amount of nicotine produced a small but
12 statistically significant increase in heart rate for
13 some period of time.

14 Q. In other words, again as a layperson I
15 put it to you, as you increased the nicotine, the
16 heart rate would increase?

17 MR. McDONNELL: Objection. That, I
18 think oversimplifies just what he testified to. I
19 understand that.

20 MR. ADELMAN: Well, he'll tell us.

21 MR. McDONNELL: I understand.

22 Objection.

23 MR. ADELMAN: I hope.

24 THE WITNESS: Basically what I'm
25 saying is that if I compared cigarettes without

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1 nicotine to cigarettes that contain nicotine, the
2 cigarettes that contain nicotine would produce a
3 small but statistically significant increase in
4 heart rate.

5 BY MR. ADELMAN:

6 Q. Okay.

7 A. Under the conditions of my experiment.

8 Q. Sure. Just one other question on that
9 point then.

10 A. Sure.

11 Q. As you -- within the realm of
12 cigarettes with nicotine in them, as you increase
13 the levels of nicotine, would the heart rate level
14 increase?

15 A. That, I don't know, sir, because I
16 didn't test that many levels.

17 Q. Let me see if I can get this out to you
18 and we can square this away.

19 A. Sure.

20 MR. ADELMAN: Mark this, please, as
21 Exhibit 3.

22 And while we're doing it, mark this as
23 Exhibit 4.

24 (Gullotta Exhibit Nos. 3 and 4
25 were marked for identification and are

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annexed hereto.)

BY MR. ADELMAN:

Q. Doctor, if you would be kind enough to review 3 and 4 together I think we can get to where I want to go.

A. Okay.

(Pause in the proceedings.)

Q. And here I'm asking you to review 3 and just the first page of 4.

A. All right.

(Pause in the proceedings.)

MR. McDONNELL: Could I ask, counsel, are you -- I take it you're not representing that these are all a single document?

MR. ADELMAN: No. And particularly Exhibit 4, it seems to be two things hooked together.

MR. McDONNELL: All right.

MR. ADELMAN: Thank you.

MR. McDONNELL: Sure.

(Pause in the proceedings.)

THE WITNESS: Okay.

BY MR. ADELMAN:

Q. Have you had a chance to review the second page of Number 3?

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INTERIM COURT REPORTING

1 A. I have.

2 Q. Okay. Now I can ask you some
3 questions.

4 Looking at 3 and 4 together, do you
5 describe in Number 3 there in your portion of that
6 memo to Mr. Dunn the project you just described
7 about effects of cigarette smoking on heart rate?

8 A. Uh-huh.

9 Q. And the first page of Exhibit 4 shows
10 at least one document pertaining to that test; am I
11 not mistaken? Am I correct?

12 A. That appears to be correct, yes.

13 Q. Okay. So you did undertake the test
14 that you described?

15 A. Yes.

16 Q. Okay. On the second page of Exhibit 3,
17 sir, there's yet another paragraph you wrote called
18 EEG Research, and you've read that just now, have
19 you not?

20 A. I have.

21 Q. This is your announcement that you're
22 setting up a psychophysiological research
23 laboratory, and you explain what machinery you're
24 going to use as such?

25 A. Uh-huh.

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1 Q. Did you in fact set that lab up?

2 A. I did.

3 Q. Was it a separate facility there at

4 Philip Morris?

5 A. Initially, no.

6 Q. Did it become a separate facility?

7 A. Later on it was, yes.

8 Q. When was that, sir?

9 A. I'd say I moved into my own laboratory
10 space about in 1978 or '9.

11 Q. And you continued in your own
12 laboratory space until you left in '92?

13 A. That's correct.

14 Q. And it's fair to say that the company,
15 Philip Morris, supported your request because they
16 in fact allowed you to purchase equipment and build
17 the lab that you wanted?

18 MR. McDONNELL: Objection.
19 Speculation.

20 BY MR. ADELMAN:

21 Q. You can answer.

22 A. They signed the purchase orders,
23 correct.

24 Q. And in fact you built the lab and
25 worked in there --

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INTERIM COURT REPORTING

1 A. Yes, I did.

2 Q. -- for 14 years. Okay.

3 To your knowledge, did Philip Morris
4 ever sell commercially on any basis, experimental,
5 testing, marketing or whatever, these cigarettes
6 with sprayed-on nicotine?

7 A. To my knowledge, no.

8 Q. Would that have been something that
9 would have come to your attention?

10 A. Not necessarily.

11 Q. And why is that?

12 A. Because I have nothing to do with sales
13 and marketing.

14 Q. You're just research?

15 A. That's correct.

16 Q. If you'll forgive me, Exhibit 4, as
17 your counsel pointed out, really has two sets of
18 documents, and attached to the first page are
19 several other pages.

20 Have you looked at those?

21 A. No, I have not.

22 Q. All right. They're all organization
23 charts and I just want you to review them with me,
24 please.

25 A. All right.

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INTERIM COURT REPORTING

1 Q. Why don't we go in order as you see
2 them, in other words, Bates number 1000086579.

3 A. Okay.

4 Q. Do you have any idea when that
5 organization chart --

6 MR. McDONNELL: Counsel, I don't mean
7 to interrupt --

8 MR. ADELMAN: I think it's the same,
9 isn't it?

10 MR. McDONNELL: It's the same as the
11 first page of Exhibit 1, yes.

12 BY MR. ADELMAN:

13 Q. Okay. Well, why don't we move then to
14 Bates number -- I'm going to give you the last four
15 numbers -- 6132.

16 Is that the chart we haven't looked
17 at?

18 MR. McDONNELL: It's the fourth page.

19 MR. ADELMAN: The fourth page. Thank
20 you.

21 THE WITNESS: Got it

22 BY MR. ADELMAN:

23 Q. In looking at the personnel listed
24 there, in your own recollection, do you know at what
25 point in time that chart reflects the organization

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INTERIM COURT REPORTING

1 of the research directorate?

2 A. I would guess -- I would guess
3 about '78 or -- yeah, about '78 I would say.

4 Q. All right, sir. Turn to the next
5 page.

6 A. Okay.

7 Q. Here is an organizational chart for
8 biochemical research division, and the manager is --
9 I think I'm reading it correctly -- J. Charles?

10 A. That's correct.

11 Q. Were you in that division?

12 A. At one point in time I was.

13 Q. Well, you're not on this chart -- oh, I
14 beg your pardon. You are. In the second box?

15 A. Here I am, yeah.

16 Q. You're moved around here. You're under
17 Electrophysiological Studies and you're listed as
18 research scientist.

19 Do you see that?

20 A. I do.

21 Q. When in point of time was this chart?

22 A. About 1981 or '82 I would say.

23 Q. Were you moved to another division; is
24 that it?

25 A. I was moved from behavioral research to

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INTERIM COURT REPORTING

1 biochemical research division.

2 Q. And why was that?

3 A. The behavioral group -- the behavioral
4 research group was being disbanded at the time.

5 Q. Do you know why?

6 A. No, I do not.

7 Q. Did you remain in the biochemical
8 research division until you left in 1992?

9 A. That's correct.

10 MR. ADELMAN: Let me have this marked,
11 please. I believe it will be Exhibit 5 for the
12 record.

13 (Gullotta Exhibit No. 5
14 was marked for identification and is
15 annexed hereto.)

16 BY MR. ADELMAN:

17 Q. Could you review Exhibit 5 to your
18 satisfaction.

19 (Pause in the proceedings.)

20 A. It's hard to read.

21 (Pause in the proceedings.)

22 All right.

23 Q. Thank you.

24 Exhibit 5 is a memo that you wrote to
25 Mr. Dunn?

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1 A. That's correct.
2 Q. Actually you and Mr. Gay wrote and
3 approved by Mr. Dunn?
4 A. Ms. Gay, yes.
5 Q. And Ms. Gay. I'm sorry.
6 And let me ask you just these
7 questions.
8 This reports on at least part of your
9 study of the cigarettes in which tobacco was sprayed
10 on them; correct?
11 A. Nicotine was sprayed on the tobacco,
12 correct.
13 Q. Excuse me. I'm a little slow today.
14 Okay. Nicotine sprayed on tobacco.
15 And I'm on page 3, if you will,
16 please.
17 A. All right.
18 Q. Where you talk about the subjects?
19 A. Yes.
20 Q. It says here they were R&D employees,
21 in other words, people that you worked with?
22 A. That's correct.
23 Q. And you describe in the apparatus
24 section the actual methodology that you used?
25 A. That's correct.

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INTERIM COURT REPORTING

1 Q. Now, I take it that you -- you are --
2 you and Ms. Gay are the author of this document,
3 Exhibit 5?

4 A. That's correct.

5 Q. And you periodically would make reports
6 in the regular course of your activities and
7 business to Mr. Dunn about this research?

8 A. We would report on a regular basis on
9 research findings to Dr. Dunn, yes.

10 Q. With that in mind, let me show you now
11 Exhibits 6 and 7, and review them, if you will, with
12 the same issues in mind.

13 A. All right.

14 MR. ADELMAN: I haven't handed them
15 over yet, but I will.

16 This, Ms. Reporter, will be Number 6
17 and this will be Number 7.

18 (Gullotta Exhibit Nos. 6 and 7
19 were marked for identification and are
20 annexed hereto.)

21 MR. McDONNELL: Counsel, when I -- may
22 I ask, when you say review it with the same issues
23 in mind, what you mean by the same issues?

24 MR. ADELMAN: Well, whether these were
25 part of his experimental work and his reports. I

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INTERIM COURT REPORTING

1 mean, review it carefully. That's a given.

2 MR. McDONNELL: All right.

3 BY MR. ADELMAN:

4 Q. Review the whole thing because I want
5 to ask you some questions.

6 (Pause in the proceedings.)

7 Have you looked at Exhibit 6?

8 A. Pardon?

9 Q. Exhibit 6?

10 A. Yes, I have.

11 Q. Why don't we start with that.

12 A. All right.

13 MR. McDONNELL: May I, just so the jury
14 doesn't get the wrong impression, I just want them
15 to understand that Dr. Gullotta has been reviewing
16 about 30 pages of scientific material --

17 MR. ADELMAN: That's true.

18 MR. McDONNELL: -- from 20 years ago or
19 so...

20 MR. ADELMAN: That's true

21 BY MR. ADELMAN:

22 Q. You looked at Exhibit 6 to your
23 satisfaction?

24 A. Yes, I have.

25 Q. Now, this is a memo not written by you

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INTERIM COURT REPORTING

1 but by a Ms. Levy and Ms. Liner?

2 A. Lieser.

3 Q. Lieser. I'm sorry.

4 To Mr. Dunn but copied to you?

5 A. Yes.

6 Q. The subject is a study of college
7 student smokers?

8 A. That's correct.

9 Q. Now, do you recall getting and reading
10 this memorandum when it was issued?

11 A. No, I do not.

12 Q. It's under the research charge
13 number 1600, smoker psychology.

14 Now, that's the same research number
15 under which you were operating; correct?

16 A. That's correct.

17 Q. Let me ask you then some questions.
18 And for the record, this is dated July 26, 1978.

19 In the memo, the body of the memo, they
20 talk about the classification of regulators or
21 nonregulators; right?

22 A. That's correct.

23 Q. And you'll notice in the memo the term
24 "regulators" is for smokers who, according to the
25 memo at page 2, smoke for nicotine. These people

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1 will alter their smoking behavior in response to
2 changes in nicotine availability in an attempt to
3 regulate their nicotine intake.

4 Those are called regulators; right?

5 A. Right.

6 Q. On the other hand, as it says in the
7 memo, people who do not smoke for nicotine, the
8 nonregulators, would not be expected to make these
9 adjustments; correct?

10 A. That's correct.

11 Q. Do you agree with that terminology?

12 A. I don't know how to respond to that.

13 MR. McDONNELL: Do you mean does he
14 understand what Dr. Levy is saying?

15 BY MR. ADELMAN:

16 Q. Do you agree with the terminology in
17 terms of what a regulator is known -- what the
18 phrase "regulator" means to the people working in
19 the research lab at Philip Morris at the time in
20 1978?

21 A. Well, sir, I can only say that that was
22 what Dr. Levy meant.

23 Q. Well, have you ever used the
24 classification "regulator"?

25 A. I don't think that I have used those

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1 exact terms, no, sir.

2 Q. Or anything similar to it?

3 A. I may have, but I don't think I've ever
4 used the term "regulator."

5 Q. What term would you use for a person
6 who smoked for nicotine and that such person will
7 alter their smoking behavior in response to changes
8 in nicotine availability in attempt to regulate
9 their nicotine intake? What would you call such
10 people?

11 A. Well, I think that the standard term
12 would be somebody who compensates.

13 Q. Oh, you'd call them a compensator?

14 A. I don't know if I've ever used that
15 term, but that would be the generally accepted
16 term.

17 Q. Okay. This memo happens to use the
18 phrase "regulators," though?

19 A. That's correct.

20 Q. Okay. What is Dr. Levy's professional
21 specialty?

22 A. She is an experimental psychologist.

23 Q. What term or phrase would you use for
24 people who do not smoke for nicotine? What would
25 you call them?

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1 A. I really don't work in that area, sir,
2 but I believe the term would be noncompensator.

3 Q. You would just substitute
4 "compensation" and "noncompensation" for those
5 other -- for those two phrases "regulator" and
6 "nonregulator"; right?

7 A. Sir, I'm not implying that one is
8 better than the other; I just --

9 Q. I'm not either.

10 A. Yeah.

11 Q. I'm not either.

12 MR. McDONNELL: Can he finish?

13 MR. ADELMAN: Sure.

14 Go ahead.

15 THE WITNESS: I was done. Thank you.

16 MR. McDONNELL: All right. I'm sorry.

17 BY MR. ADELMAN:

18 Q. With respect to Exhibit 6, can you tell
19 us whether you took -- Dr. Levy's report --

20 A. Oh, I see.

21 Q. -- this into account in any way in the
22 work that you did at the lab over the years from
23 1977 to 1992?

24 A. I don't think so, sir, no.

25 Q. Why were you copied on it?

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1 A. The reason why I was copied on it was
2 simply because I was a member of the behavioral
3 research group and that's the way we did it.

4 Q. To your knowledge and recollection,
5 was this study of 15 college students, smokers,
6 referred to in Exhibit 6 ever discussed by members
7 of the staff there at the research center including
8 you?

9 A. It in all likelihood was.

10 Q. Do you happen to remember the -- excuse
11 me.

12 Do you happen to remember the
13 discussion?

14 A. No, I do not.

15 Q. All right. Exhibit 7 is the other
16 exhibit there. Take a look.

17 A. Yes.

18 Q. Now, this one is written by you?

19 A. Yes.

20 MR. McDONNELL: Had you finished?

21 THE WITNESS: No, I hadn't

22 BY MR. ADELMAN:

23 Q. Oh, well, take a look at Exhibit 7.
24 I'm sorry.

25 MR. McDONNELL: Yeah, he's almost

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1 finished I think.

2 MR. ADELMAN: All right.

3 MR. McDONNELL: Maybe not.

4 (Pause in the proceedings.)

5 THE WITNESS: Okay.

6 BY MR. ADELMAN:

7 Q. Okay. Exhibit 7 is a memo under the
8 date of or over the date of July 28, 1978 written by
9 you and Ms. Gay; correct?

10 A. That's correct.

11 Q. And this reports, does it not, on the
12 study that you were describing earlier in your
13 testimony of the effect of varying amounts of
14 nicotine in cigarettes?

15 A. On heart rate, yes.

16 Q. On heart rate, yes, sir.

17 A. That's correct, yes.

18 Q. How long did that study continue?

19 A. I can't recall in particular, but
20 usually a study of that size would take for the
21 actual experiment about a couple of months and then
22 another month or so to write it up.

23 Q. All right. Thank you.

24 Let me ask you whether you ever
25 attended an international conference on smoking

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1 behavior sponsored by BAT.

2 Do you know what BAT, B-A-T, is?

3 A. Yes.

4 No, I did not.

5 Q. Well, tell us what BAT is first.

6 A. Oh. Sorry. British American Tobacco
7 Company.

8 Q. And specifically such a conference,
9 international conference on smoking behavior
10 sponsored by BAT November 28 to December 2 in 1977?

11 A. No, I did not.

12 Q. Have you ever attended any conferences
13 sponsored by BAT on smoking, on any subject related
14 to smoking?

15 A. To my knowledge, no.

16 Q. That means you could have but you've
17 forgotten?

18 A. It's more likely that I didn't.

19 Q. Did you ever contribute any papers,
20 reports or writings to any BAT conference on
21 smoking?

22 A. No, I have not.

23 Q. The electrophysiology work that you did
24 at your lab there, was that ever submitted or
25 offered at any international conference on smoking?

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1 A. I'm sorry. I didn't understand.

2 Q. Sure. That was really a compound
3 question.

4 You did of course research on the
5 electrophysiological effects of smoking over time,
6 didn't you?

7 A. That's correct.

8 Q. And you reported on that internally to
9 people who you worked with; correct?

10 A. That's correct.

11 Q. Were the results of any of that
12 research ever published or issued at conferences,
13 international conferences on smoking or domestic
14 conferences on smoking, to your knowledge?

15 A. I don't think so. There may have been
16 a one -- I really don't think so.

17 Q. Had that happened, I assume there
18 would have had to have been a waiver of
19 confidentiality on the part of either you or the
20 company?

21 MR. McDONNELL: I'm not sure if you're
22 asking him a legal question.

23 BY MR. ADELMAN:

24 Q. Yeah, that's a good point.

25 I'm asking a fact question, to your

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1 knowledge as a layperson.

2 Let me approach it this way. Counsel
3 has got a point there.

4 What you were doing, the research you
5 were doing, necessarily is confidential within the
6 company; correct?

7 A. That's correct.

8 Q. I mean, you weren't putting it in books
9 or handing it out publicly; right?

10 A. That's correct.

11 Q. And to your knowledge as a layperson --
12 just forgetting your lawyer or sense you might have
13 as a lawyer, a law person -- any distribution of
14 your research by either you or the company would
15 have had to have been subject to a waiver of that
16 confidentiality?

17 A. To my understanding, all it would have
18 to do was have management approval and then go
19 through the manuscript review board.

20 Q. Okay. That's the process as you
21 understood it?

22 A. Yes.

23 Q. Did you ever submit any of your
24 research for management approval or manuscript
25 review for the purposes of publishing it?

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1 A. Yes.

2 Q. What research was that?

3 A. I don't recall exactly what it was.

4 MR. McDONNELL: Would this be an
5 appropriate time?

6 MR. ADELMAN: Yeah. Let's take our
7 break here and go off the record for a second.

8 THE VIDEOGRAPHER: This ends videotape
9 number 1.

10 The time on the screen is 10:59:14.

11 (Discussion off the record.)

12 (Recess)

13 THE VIDEOGRAPHER: This is videotape
14 number 2 of the deposition of Dr. Gullotta.

15 The time on the screen is 11:28:48.

16 You're on the record.

17 BY MR. ADELMAN:

18 Q. Thank you.

19 Doctor, are you ready to proceed with
20 your deposition?

21 A. I am.

22 Q. Before we get back to these documents
23 that we marked and you reviewed during the break,
24 let me ask you some more questions about your tenure
25 in Europe.

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1 You did come back in 1995?
2 A. That's correct.
3 Q. When was that, sir?
4 A. It was about -- I think it was
5 December 11 or 12, 1995.
6 Q. Who told you to come back?
7 A. I asked to come back.
8 Q. Why did you ask to come back?
9 A. Because I wanted to do additional
10 things.
11 Q. And whom did you ask to come back?
12 A. I asked Dr. Cathy Ellis.
13 Q. She was the chief of research back
14 here -- or back in Richmond?
15 A. Her title I think was vice president of
16 research, or she could have been director of
17 research at the time. I can't recall.
18 Q. What do you mean, you wanted to do
19 different things?
20 A. I wanted to do more of what I'm doing
21 now.
22 Q. And you've described that earlier in
23 your testimony?
24 A. Yes.
25 Q. And what you're doing now, by the way,
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1 is not research but other scientific matters?

2 A. That's correct.

3 Q. Did you make this request in writing?

4 A. No, I did not.

5 Q. Did she respond or anybody else in the
6 company respond in a written memo or document
7 regarding your request to come home?

8 A. Not to my knowledge.

9 Q. Did anybody oppose your request?

10 A. Not to my knowledge.

11 Q. Did you talk to Dr. Kobol about it?

12 A. Yes, I did.

13 Q. What was his reaction?

14 A. Well, I need to put it in context.
15 He was organizing a taste and smell
16 symposium and he asked me to be a speaker and I said
17 that I couldn't do it because I was going back to
18 the States.

19 Q. Well, you still have to tell us what
20 his reaction was.

21 A. That, I don't recall.

22 Q. Well, did he oppose your going back?

23 A. Not to my knowledge, no.

24 Q. Did he ask you to stay?

25 A. No, he did not.

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1 Q. Did anybody over there at INBIFO ask
2 you to stay in December 1995 when you had announced
3 your intent to come back?

4 A. No.

5 Q. When you came back, did you bring your
6 research materials and documents that you had
7 accumulated during your three-year tenure there back
8 with you?

9 A. I did.

10 Q. Did you leave any documents behind that
11 you'd brought over?

12 A. No, I did not.

13 Q. Because you said earlier in your
14 testimony that when you went over you took some
15 uncompleted research with you in order to write it
16 up; right?

17 A. That's correct.

18 Q. My question is: Did you bring that
19 material back with you?

20 A. I did.

21 Q. Was any of the research or underlying
22 data that you did during your years in
23 electrophysiology at Philip Morris up to 1992 taken
24 over to Europe and kept there?

25 A. No.

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1 Q. All right. Let me show you -- or you
2 have Exhibit 8 and you've reviewed it.

3 A. Uh-huh.

4 MR. McDONNELL: Let me just say, it
5 90 pages or so, he went through it, but he may need
6 some extra time.

7 MR. ADELMAN: My questions will be
8 specific, counsel. I'll try to deal with that.

9 MR. McDONNELL: All right.

10 MR. ADELMAN: Madam Reporter, here's
11 Exhibit 8.

12 (Gullotta Exhibit No. 8
13 was marked for identification and is
14 annexed hereto.)

15 BY MR. ADELMAN:

16 Q. Now, you've reviewed that?

17 A. Briefly, yes.

18 Q. All right. You wrote this memo to
19 Mr. Kinser. Who is he?

20 A. That's Dr. Kinser, Robin Kinser. I
21 might have neglected that she was my manager at one
22 time, too.

23 Q. But you reported to her?

24 A. Yes.

25 Q. What is project 1620 to which you refer

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1 in the headline?

2 A. That 1620 refers to
3 electrophysiological studies.

4 Q. And those are similar studies that
5 you've described in your testimony heretofore?

6 A. That's correct.

7 Q. Now, you've listed here in your memo
8 11 accomplishments and then 31 writings or papers,
9 have you not?

10 A. Yes. 31 references.

11 Q. Did you in fact do all of the
12 accomplishments 1 to 11 that you listed here; these
13 are things you completed?

14 A. Yes.

15 Q. And the bibliography, so I can
16 understand, these are either programs where you
17 appeared or writings that you did in connection with
18 your research?

19 A. Those are references to things that I
20 had done that I was referencing in parentheses on
21 the accomplishments.

22 Q. That's right. But just so we're clear,
23 just taking the bibliography number 3, Evaluation of
24 Proposal Submitted by G. Kobal, that's just an
25 internal memo you're talking about; right?

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1 A. That's correct.

2 Q. But all of these bibliographies,
3 putting aside the ones that don't -- all these
4 bibliographies are documents either created or
5 contributed to by you?

6 A. By me and colleagues in my laboratory.

7 Q. All right. Thank you.

8 Would you turn to Number 9, Exhibit
9 Number 9.

10 Oh, excuse me. Ms. Reporter, here's
11 Exhibit 9.

12 (Gullotta Exhibit No. 9
13 was marked for identification and is
14 annexed hereto.)

15 BY MR. ADELMAN:

16 Q. Have you reviewed that?

17 A. Briefly.

18 Q. Can you identify this document?

19 A. Actually I can't.

20 Q. Well, did you write it?

21 A. Apparently I did, yes, part of it at
22 least.

23 Q. What part did you write?

24 A. Let's see. That would be 1, 2, 3, 4,
25 Bates number that ends with 5179.

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1 MR. McDONNELL: Counsel, you'll accept
2 this may be more than one document here.

3 MR. ADELMAN: I'll get to that.

4 MR. McDONNELL: All right.

5 THE WITNESS: That appears to be it --
6 oh, and part of page that ends with Bates number
7 9162 and part of --

8 MR. McDONNELL: Frank, I think you
9 misspoke. 96152?

10 THE WITNESS: 96152 and 96153. Excuse
11 me.

12 MR. McDONNELL: Okay. Sure
13 BY MR. ADELMAN:

14 Q. Do you know who this was submitted to?

15 A. I don't know.

16 Q. The parts that you wrote that you've
17 identified, what you wrote in there is true and
18 accurate, isn't it?

19 A. To the best of my knowledge, correct.

20 Q. Now, there's one page that has the
21 last three Bates numbers 521 that has handwriting on
22 it.

23 A. I see that.

24 Q. Do you recognize that handwriting?

25 A. No, I do not.

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1 Q. Is it yours?
2 A. No.
3 Q. If you will, the fourth written
4 paragraph there begins with "Gullotta"?
5 A. Uh-huh.
6 Q. That's you?
7 A. Yes.
8 Q. Can you read for us what the rest
9 says?
10 A. "Nicotine sensory effect is pain
11 effect. High threshold rapidly adjusting factors
12 are being stimulated." I -- "WS" -- I can't read
13 the rest.
14 Q. If I can --
15 A. "Modify part" -- I can't read it.
16 Q. In the second sentence there doesn't it
17 say "rapidly adapting"?
18 A. It could be.
19 Q. Okay?
20 A. It could be very well.
21 Q. You don't know who wrote this?
22 A. No.
23 Q. You don't know what the purpose of this
24 was, this document was prepared for, do you?
25 A. No, I do not.
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1 Q. All right.

2 MR. McDONNELL: And counsel, may I ask,
3 do you -- is it your representation that this is all
4 one document or --

5 MR. ADELMAN: No.

6 MR. McDONNELL: -- might it be several
7 documents?

8 MR. ADELMAN: It's not, and I don't
9 mean to present it that way. It's just that it was
10 hooked together that way for me.

11 MR. McDONNELL: All right.

12 MR. ADELMAN: We'll proceed that way.

13 MR. McDONNELL: I appreciate that.

14 MR. ADELMAN: Thank you.

15 Now, let me ask the reporter to mark
16 this as Exhibit Number 10.

17 (Gullotta Exhibit No. 10
18 was marked for identification and is
19 annexed hereto.)

20 BY MR. ADELMAN:

21 Q. And again, sir, this is a multipage
22 document that I asked you to review during the
23 break. Have you done so?

24 A. Briefly I have.

25 Q. All right. Turn to page 8.

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1 A. All right.
2 Q. All right. And with page 8 sort of in
3 front of you, first of all, this is a document --
4 actually it's a memo from a Mr. W.L. Dunn to
5 Dr. T.S. Osdene; right?
6 A. That's correct.
7 Q. And it says "Behavioral Research
8 Accomplishments"?
9 A. That's right.
10 Q. Is this sort of a joint submission by
11 several researchers there at Philip Morris to the
12 superiors there about their research work?
13 A. That's correct.
14 Q. And did you write the portion on
15 pages 8 and 9 that says "Electrophysiology Program,
16 written by Frank Gullotta"?
17 A. I did.
18 Q. Actually it runs to page 10. And --
19 A. Yes.
20 Q. It does run to 10.
21 And you were summarizing there what
22 work you had done during the period preceding
23 December 23, 1980?
24 A. That's correct.
25 Q. And to the best of your knowledge, is
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1 what is contained at pages 8, 9 and 10 of this
2 Exhibit Number 10 true and accurate?

3 A. That's correct.

4 MR. ADELMAN: All right.

5 Now I'll ask the reporter to mark this
6 as Exhibit Number 11.

7 (Gullotta Exhibit No. 11
8 was marked for identification and is
9 annexed hereto.)

10 BY MR. ADELMAN:

11 Q. Again, sir, Exhibit 11, is it not, is
12 one of these behavioral research accomplishments for
13 the year 1979 here under the date of January 21,
14 1980?

15 A. That's correct.

16 Q. And you contributed the part right on
17 page 1 that says "electroencephalography program"?

18 A. That's correct.

19 Q. Who is Frankovitch?

20 A. She was my research assistant during
21 one period of time.

22 Q. What pages of this document did you
23 write, sir?

24 A. Okay. I wrote to page 4 up to where it
25 says the comparative psychology program. I did not

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1 write that part. The comparative program. Excuse
2 me.

3 Q. Just to summarize, you wrote
4 everything under Electroencephalography Program on
5 page 1 all the way to The Comparative Program on
6 page 4?

7 A. That's correct.

8 Q. And again, is what's contained in that
9 portion of Exhibit 11 true and accurate to the best
10 of your knowledge?

11 A. Yes.

12 MR. ADELMAN: All right.

13 Let me have this marked as Exhibit 12.

14 (Gullotta Exhibit No. 12

15 was marked for identification and is
16 annexed hereto.)

17 BY MR. ADELMAN:

18 Q. Now, have you reviewed Exhibit 12
19 during the break?

20 A. Briefly, yes.

21 Q. All right. Well, I'm just going to ask
22 you generally to identify this document. Yeah.
23 What's Exhibit 12?

24 A. Exhibit 12 is an annual report for the
25 year covering July 1980 to July 1981.

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1 Q. It -- go ahead.

2 A. And it is part 2 of the behavioral
3 research annual report and includes the work on the
4 encephalography program and the inhalation
5 monitoring program.

6 Q. And you wrote Exhibit 12?

7 A. I wrote the section on
8 electroencephalography.

9 Q. Who wrote the other section on
10 inhalation monitoring?

11 A. That was Jan Jones.

12 Q. Okay. And again, without going through
13 it, let me ask you -- well, having gone through it,
14 let me ask you this question.

15 Can you identify the parts by pages
16 that you wrote?

17 A. From -- let's see. Part of page 1 and
18 then 2 through 25 and -- let's see if these are
19 only -- and page 26.

20 Q. And within those pages there are also,
21 for instance, on page 19, charts and graphs?

22 A. Yes.

23 Q. So when we say "wrote," you also
24 created the charts and graphs within those first
25 26 pages?

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1 A. Let me take a look at that.

2 Yes, I did.

3 Q. To the best of your knowledge, is
4 everything within those first 26 pages of this
5 document Exhibit 12 that you wrote true and
6 accurate?

7 A. That's correct.

8 MR. ADELMAN: Now, I'm going to mark
9 this one page of a larger document as an exhibit,
10 and I'll also mark the larger document for the
11 record.

12 Why don't we call the larger document
13 the next exhibit, which would be 13. Madam
14 Reporter?

15 THE REPORTER: Yes.

16 MR. ADELMAN: Thank you. Then we'll
17 mark this document Exhibit 13-A, as in apple.

18 (Gullotta Exhibit No. 13
19 was marked for identification and is
20 annexed hereto.)

21 BY MR. ADELMAN:

22 Q. Doctor, if you would be kind enough to
23 lift up 13 and just put it right on top of 13-A --
24 no, the other way around.

25 A. Oh, the other way around. All right.

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1 Q. Keeping -- okay.

2 First of all, can you identify
3 Exhibit 13, generally?

4 A. It doesn't look familiar to me.

5 Q. Well, could you read the heading of
6 it.

7 A. Philip Morris Behavioral Research
8 Program.

9 Q. For what period of time?

10 A. Gosh, where --

11 MR. McDONNELL: Go ahead. Let me take
12 a look at the rest of the exhibit if I can.

13 THE WITNESS: Okay.

14 BY MR. ADELMAN:

15 Q. I ask you again, have you seen this
16 before?

17 A. I don't think so.

18 MR. McDONNELL: If you'll hold on just
19 one second here.

20 (Pause in the proceedings.)

21 I believe, although it is not so
22 marked, I believe that this is a document as to
23 which Philip Morris claims work product privilege or
24 work product protection.

25 MR. ADELMAN: Can you identify the

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document?

MR. McDONNELL: Well, it's the document that you have marked as Exhibit 13 here, the entire document I'm -- I mean, I can't speak with any specificity to what you've marked as 13-A. I'm going to take that out for just a moment.

But I believe that at least -- at least pages 1 through 56, that is, the table of contents, which are Roman small i through iii and then numbers 1 -- pages 1 through 56, which is a single-spaced --

MR. ADELMAN: Well, let me ask you this. For the record, what is the basis for the work product claim?

MR. McDONNELL: I believe it was a document prepared by counsel for Philip Morris in anticipation of litigation.

MR. ADELMAN: What counsel is that?

MR. McDONNELL: I'm not sure I'm -- I know what counsel. I believe it was the firm of Shook, Hardy & Bacon, but I'm not a hundred percent sure.

I don't believe that -- just let me complete this.

I don't believe that the pages

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1 following page 56 are part of the same document.

2 MR. ADELMAN: Yeah. Okay. Let me
3 speak now.

4 MR. McDONNELL: Sure.

5 MR. ADELMAN: My purpose in marking
6 Exhibit 13 was to identify the larger document from
7 which Exhibit 13-A will be taken.

8 MR. McDONNELL: I understand.

9 MR. ADELMAN: And so the record is
10 clear, I'm only going to examine the witness about
11 Exhibit 13-A.

12 MR. McDONNELL: But I'm going to object
13 to that on the grounds that if -- see, I'm not --
14 this is complicated.

15 I don't believe that the portion of
16 Exhibit 13 from which the page that you have marked
17 13-A is taken is part of the same document that the
18 first 56 pages are.

19 I don't know what this is, but it may
20 very well be something as to which Philip Morris
21 claims privilege to.

22 This is something as to which
23 Philip Morris claims the privilege. I must object
24 and I can't permit him to answer questions on it.

25 MR. ADELMAN: Okay. Let's -- maybe we

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1 can work this -- work through this.

2 Exhibit 13 is a document --

3 MR. McDONNELL: Let's see. I want to
4 take -- see if I can find it.

5 MR. ADELMAN: Let me try to clear the
6 record up.

7 MR. McDONNELL: Okay.

8 MR. ADELMAN: Exhibit 13 is a large
9 document styled with the style Table of Contents,
10 Philip Morris Behavioral Research Program. It has,
11 as counsel points out, a section that ends at
12 page 56 with Bates number 2021423461.

13 MR. McDONNELL: Right.

14 MR. ADELMAN: And then it continues.

15 MR. McDONNELL: Although the Bates
16 numbering is not sequential, or is it? Perhaps it
17 is. I'm not sure.

18 MR. ADELMAN: Let me just make my
19 point, counsel.

20 MR. McDONNELL: I'm sorry.

21 MR. ADELMAN: Then it continues for a
22 number of more pages.

23 At Bates number 1003123090 there is a
24 single page.

25 MR. McDONNELL: Right.

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1 MR. ADELMAN: I've marked that single
2 page as Exhibit 13-A.

3 MR. McDONNELL: Right.

4 MR. ADELMAN: It is my proposal and my
5 purpose and intent to examine this witness only
6 about Exhibit 13-A.

7 Now, from what I heard you say,
8 counsel, it's your position, your client's position,
9 that the first 56 pages of Exhibit 13 are work
10 product privileged, and I make the point that what I
11 propose to do is not to ask him anything about those
12 pages but simply to ask him questions about a one --
13 one page farther back, past page 56, and leave it at
14 that.

15 I don't want to go into this in any
16 other aspect. I just want to ask him about 13-A,
17 which I will identify as Bates number 1003123090,
18 which is a chart of some sort, and I simply want to
19 ask this witness questions about that.

20 MR. McDONNELL: I understand. And I
21 apologize for sort of the -- being technical here.

22 But I cannot say that this document is
23 not part of a privileged document, and I cannot
24 waive a privilege on behalf of Philip Morris, the
25 assertion of a privilege on behalf of Philip Morris

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1 here today.

2 I understand that you want to question
3 him only about one page of a document that -- and
4 the portion of the document from which it's taken
5 may or may not be privileged, but I -- the risk of a
6 waiver if I acquiesce in that, at least at this
7 point, is a risk that I don't think it would be
8 appropriate for Philip Morris or counsel to run.

9 So I must object and at least, and at
10 least for the time being, instruct the witness not
11 to answer any questions about this page.

12 MR. ADELMAN: All right. You're saying
13 you're going to instruct the witness not to answer
14 any questions about Exhibit 13-A, which is a single
15 page of the larger document 13?

16 MR. McDONNELL: That's right.

17 If you can clarify for me and for the
18 record the relationship between pages 1 through 56
19 and the successive pages, I would be willing to
20 inquire further with Philip Morris.

21 I do recognize pages 1 through 56. I
22 do recognize that they are part of a work
23 product-protected document.

24 And you, at least as we have marked it,
25 we have -- the suggestion is that these are all part

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1 of the same document. If they are indeed all part
2 of the same document, I really have no alternative
3 but to object.

4 MR. ADELMAN: All right. You're going
5 to instruct him not to answer?

6 MR. McDONNELL: And instruct him not to
7 answer, yes.

8 MR. ADELMAN: All right. Well, look,
9 we'll just lodge this in the record, with your
10 objection noted and our position noted, that we're
11 entitled to question him at least about 13-A and we
12 haven't even taken any position with respect to 13
13 in toto.

14 MR. McDONNELL: That's acceptable.
15 Thank you very much.

16 MR. ADELMAN: Give me a moment,
17 please.

18 MR. McDONNELL: Sure.

19 (Pause in the proceedings.)

20 MR. ADELMAN: Would you mark this as
21 Exhibit 14, please.

22 (Gullotta Exhibit No. 14
23 was marked for identification and is
24 annexed hereto.)

25 MR. ADELMAN: Off the record for a

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1 second.

2 THE VIDEOGRAPHER: Off the record

3 11:53:34.

4 (Discussion off the record.)

5 THE VIDEOGRAPHER: On record 11:53:55.

6 BY MR. ADELMAN:

7 Q. Doctor, Exhibit 14 is in front of you.
8 Can you tell us whether you recognize
9 this?

10 A. I don't have a copy of it, sir.

11 Q. Oh, I'm sorry.

12 MR. McDONNELL: Oh, I'm sorry. It's my
13 fault.

14 MR. ADELMAN: Your lawyer has it.

15 MR. McDONNELL: My fault. You do
16 have -- oh, you don't have another copy of it?

17 MR. ADELMAN: No.

18 MR. McDONNELL: That's quite all
19 right. We'll look at it together.

20 BY MR. ADELMAN:

21 Q. Do you recognize Exhibit 14, Doctor?

22 A. Let me take a look through it.

23 (Pause in the proceedings.)

24 Yeah, I believe I recognized it, but I
25 don't think it's complete.

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1 Q. Well, let's go, first of all, to the
2 point of asking you what you recognize it to be.

3 A. It appears to me to be a behavioral
4 research annual report.

5 Q. Do you know for what year?

6 A. No. But I think it's one of the annual
7 reports that in fact we put -- that we looked at
8 earlier. It would be probably 1978.

9 Q. Did you write any part of Exhibit 14?

10 A. I did.

11 Q. Can you identify those pages?

12 A. I wrote up until I believe -- let me
13 just take -- I can't see the page numbers. There it
14 is. Excuse me.

15 Up to the top, very top of page 21, I
16 believe.

17 Q. Why don't you read the Bates number
18 into the record there.

19 A. All right. It would be 1003178379.

20 Q. And again with respect to those
21 21 pages included within which you just indicated,
22 is what you wrote there true and accurate to the
23 best of your knowledge?

24 A. It is.

25 MR. ADELMAN: All right. I have no

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1 further questions.

2 MR. McDONNELL: All right. I have no
3 questions on redirect, so the deposition is
4 concluded.

5 MR. ADELMAN: The deposition is
6 concluded subject to the issues raised here by
7 counsel regarding Exhibits 13 and 13-A and subject
8 to the issue involving the Fifth Amendment assertion
9 or the issue of questioning about Fifth Amendment
10 assertion and of course subject to our right to
11 reconvene this deposition as we maintained at the
12 outset.

13 MR. McDONNELL: And when we talked
14 about the Fifth Amendment invocation issue you
15 indicated that you might return to it and respond to
16 my offer to permit him to answer that question if
17 you would stipulate that it was not a waiver.

18 MR. ADELMAN: Yes. I'm going to
19 reflect on that. I don't want to get into it now.

20 MR. McDONNELL: All right.

21 MR. ADELMAN: Thank you, Doctor.

22 THE VIDEOGRAPHER: This ends the
23 deposition. We're going off the record.

24 The time on the screen is 11:57:18.

25 (Discussion off the record.)

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THE VIDEOGRAPHER: On record 11:59:10.

MR. ADELMAN: Counsel have further
statements to make with regard to this deposition.

MR. McDONNELL: I've suggested and I
think that Mr. Adelman has agreed that we will
investigate further the issues relating to
Exhibit 13, and if it's possible to continue the
deposition with respect to Exhibit 13, we will do
so.

MR. ADELMAN: That's agreeable.

MR. McDONNELL: Thank you.

MR. ADELMAN: Thank you.

THE VIDEOGRAPHER: Off record
11:59:37.

(The luncheon recess was taken
at 11:59 A.M.)

INTERIM COURT REPORTING
1 APPEARANCES OF COUNSEL:
2 (P.M. SESSION)
3

4 ROGER M. ADELMAN, ESQ.
5

6 ALFRED T. McDONNELL, ESQ.
7

8 ALSO PRESENT:
9

10 SHELLEY SANDERS, VIDEOGRAPHER
11
12
13
14

15
16 REPORTED BY:
17

18 JOSETT T. HAL
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(The deposition of FRANK PAUL GULLOTTA
was reconvened at 12:38 P.M.)

FRANK PAUL GULLOTTA,
having been previously duly sworn, testified further
as follows:

THE VIDEOGRAPHER: On record at
12:38:35.

MR. ADELMAN: Okay. We're resuming the
deposition to make a statement for the record here.

During the break, counsel have
endeavored, respective counsel have endeavored to
determine the status of Exhibit 13 which contains
within it Exhibit 13-A, and I think we've reached
the point where we have decided that more
investigation on both sides needs to be done before
we can proceed to use this exhibit.

Is that correct?

MR. McDONNELL: I think that's right.

My understanding is that the page
marked 13-A is not part of the same document that
we've marked 13, at least that pages 1 through 56 of
that are a document different from the pages that
follow, and -- but until we can ascertain that

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1 that's so to Mr. Adelman's satisfaction, I think
2 it's appropriate for us not to proceed.

3 MR. ADELMAN: All right. So we'll
4 suspend the deposition at this point.

5 Plaintiffs for the record reserve the
6 right, after appropriate inquiry, if it's determined
7 appropriate to do so, to inquire regarding
8 Exhibit 13-A and Exhibit 13 if they desire, as well
9 as to resume the deposition or further depose the
10 doctor. As we described earlier today, we reserve
11 the right to depose him again.

12 MR. McDONNELL: And our position of
13 course is that this doesn't change or affect the
14 position we have taken, which is that this is
15 Dr. Gullotta's deposition for this case and that we
16 will not offer him again for deposition.

17 But we each have our respective
18 positions, and that's the way it is.

19 MR. ADELMAN: All right. Thank you.

20 MR. McDONNELL: Thank you.

21 MR. ADELMAN: We're concluded now.
22 Thank you.

23 THE VIDEOGRAPHER: We're going off the
24 record.

25 The time on the screen is 12:40:25.

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The super-VHS camera originals will be
maintained by Certified Video Services.

(TIME NOTED: 12:40 P.M.)

I declare under penalty of perjury
under the laws of the State of Ohio
that the foregoing is true and correct.

Executed on _____, 1998,
at _____, _____.

SIGNATURE OF THE WITNESS

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DISTRICT OF COLUMBIA, to wit:

I, Josett F. Hall, before whom the foregoing deposition was taken, do hereby certify that the within-named witness personally appeared before me at the time and place herein set out, and after having been duly sworn by me, according to law, was examined by counsel.

I further certify that the examination was recorded stenographically by me and this transcript is a true record of the proceedings.

I further certify that I am not of counsel to any party, nor an employee of counsel, nor related to any party, nor in any way interested in the outcome of this action.

As witness my hand and notarial seal this 3rd day of November, 1998.

JOSETT F. HALL

Notary Public

MY COMMISSION EXPIRES: 12-14-99

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EXAMINATION

FRANK PAUL GULLOTTA, Ph.D.

(By Mr. Adelman)

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INTERIM COURT REPORTING
DEPOSITION EXHIBITS
FRANK PAUL GULLOTTA, Ph.D.

NUMBER	DESCRIPTION	IDENTIFIED
A	Copy of letter dated October 19, 1998 to Frank Jenecek, Esq., from Bradley Lerman with attachments.	4
1	Copy of organization chart.	61
2	Copy of Smoker Psychology report dated November 11, 1977.	70
3	Copy of Smoker Psychology report dated October 10, 1977.	76
4	Copy of memorandum to Dr. R.B. Seligman from F. P. Gullota dated March 14, 1978.	76
5	Copy of Smoker Psychology report dated February 27, 1978.	83

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DEPOSITION EXHIBITS (CONTINUED)
FRANK PAUL GULLOTTA, Ph.D.

NUMBER	DESCRIPTION	IDENTIFIED
6	Copy of Smoker Psychology report dated July 26, 1978.	85
7	Copy of Smoker Psychology report dated July 28, 1978.	85
8	Copy of Inter-Office Correspondence to R. D. Kinser from F. P. Gullota dated January 31, 1990.	100
9	Copy of document entitled, "Specific Studies."	102
10	Copy of Inter-Office Correspondence to Dr. T. S. Osdene from W. L. Dunn dated December 23, 1980.	105

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DEPOSITION EXHIBITS (CONTINUED)
FRANK PAUL GULLOTTA, Ph.D.

NUMBER	DESCRIPTION	IDENTIFIED
11	Copy of Inter-Office Correspondence to Dr. T. S. Osdene from W. L. Dunn dated January 21, 1980.	107
12	Copy of document entitled "A- The Electroencephalography Program, B- The Inhalation Monitoring Program."	108
13	Copy of document entitled "Philip Morris Behavioral Research Program."	110
14	Copy of document entitled "Table of Contents, The Effects of Cigarette Smoking on the Heart Rate," et cetera.	117

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